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Government of Bengal

Legislative Department

The Bengal Code

In Five Volumes

Fifth Edition

Volume V

Bengal Acts 1931 to 1938

and

Eastern Bengal and Assam Acts 1907—1912

Superintendent, Government Printing
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PREFACE.

This, the Fifth Volume of the fifth edition of the Bengal Code contains such of the Bengal Acts of the years 1931 to 1938 as are now in force in the Province of Bengal or in any part of that Province. This Volume has been divided into two parts containing, respectively, Acts passed by the Bengal Legislature and the Eastern Bengal and Assam Acts in force in Bengal. The system followed in editing the Volume is described in the 'Preface' to Volume I of this Code.

The Acts included in this Volume are printed generally as modified up to the 31st December 1938 ; but the repeals and amendments recently effected by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), have also been taken into account in preparing the text as well as the Chronological Table.

E. B. H. BAKER,

*Secretary to the Government of Bengal,
Legislative Department.*

CALCUTTA :

The 1st April 1939.

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The Bengal Code

Volume V

**BENGAL ACTS OF 1931 TO 1938 AND EASTERN BENGAL AND
ASSAM ACTS IN FORCE IN BENGAL.**

PART I.

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Bengal Act III of 1931

THE BENGAL STATE AID TO INDUSTRIES ACT, 1931.

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Bengal Act III of 1931

(THE BENGAL STATE AID TO INDUSTRIES ACT, 1931.)¹

(22nd October 1931.)

An Act to provide for the giving of State aid to industries in Bengal.

WHEREAS it is expedient to make provision for the giving of State aid to industries in Bengal;

5 & 6 Geo. V, c. 61 ;
6 & 7 Geo. V, c. 37 ;
9 & 10 Geo. V, c. 101.
AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal State Aid to Industries Act, 1931.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date² as the³ [Provincial Government] may, by notification, appoint.

Short title,
local extent
and
commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) " Board " means the Board of Industries established under section 3 ;

(2) " Chairman " means the Chariman of the Board ;

(3) " Director " means the Director of Industries, Bengal, and includes any person appointed by the³ [Provincial Government] to discharge the functions of the Director under this Act ;

(4) " industry " means any industrial business or enterprise, including agriculture, undertaken or conducted by any person ;

(5) " machinery " includes plant, apparatus, tools and other appliances required for carrying on any industrial operation or process ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1930, Pt. IV, page 107 ; and for report of the Select Committee, see *ibid*, page 148 ; and for Proceedings in Council, see *Bengal Legislative Council Proceedings*, Vol. XXXV, p. 203 and Vol. XXXVII, pp. 140 and 217.

²The Act came into force on the 15th January, 1932, vide Notification No. 7392Ind., dated the 23rd December, 1931, published in the *Calcutta Gazette*, dated the 31st December 1931, Pt. I, p. 1636.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Establishment of a Board of Industries.

For section 3, substitute the following section, namely:—

3. (1) The State Government shall establish a Board to be called 'the Board of Industries' for carrying out the purposes of this Act, and consisting of the following members, namely:—

- (a) two members, not being officers in the service of Government, to be appointed by the State Government, one of whom shall be an economist and the other a scientist of standing and repute;
- (b) one member associated with a scheduled bank having its head office in the State and conversant with the conditions of industrial finance in the State, to be appointed by the State Government;

Explanation.—In this clause the expression 'scheduled bank' means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934;

II of 1934.

- (c) four members, not being officers in the service of Government, to be appointed by the State Government, two of whom shall be appointed to represent industry and the other two to represent trade;
- (d) four members, not being officers in the service of Government, to be appointed by the State Government, two of whom shall be appointed to represent cottage industries and the other two to represent small-scale industries;
- (e) one member to be appointed by the Financial Corporation of the State of West Bengal if and when such Corporation is established under the State Financial Corporations Act, 1951;

-
- (f) the Director of Industries, *ex officio*;
 - (g) two members to be elected by the West Bengal Legislative Assembly from among the members of the Assembly, not being a Minister, a Minister of State or a Deputy Minister of the Government of West Bengal;
 - (h) one member to be elected by the West Bengal Legislative Council from among the members of the Council, not being a Minister, a Minister of State or a Deputy Minister of the Government of West Bengal;

Provided that the Board shall have power to co-opt for the discussion of any particular question before it not more than three members specially qualified to advise on the matter in question or having special knowledge of local conditions in the area where the industry in question is situate.

(2) An officer appointed in this behalf by the State Government shall be the Secretary to the Board."

(Substituted by West Ben. Act XV of 1954, section 2.)

[No. 53, dated the 11th June, 1954]

In section 4,—

(a) for the words "clauses (c), (d), (e), (f) and (g) of sub-section (1) of section 3 does not elect the member to be elected by it" *substitute* the words "clauses (e), (g) and (h) of sub-section (1) of section 3 does not appoint or elect the member to be appointed or elected by it, as the case may be,"; and

(b) for the words "duly elected by the body failing to elect" *substitute* the words "duly appointed or elected, as the case may be, by the body failing to appoint or elect".

procedure
default
election
member

(Substituted by West Ben. Act XV of 1954, section 3.)

[No. 53, dated the 11th June, 1954.]

said provisions.

5. The Board may from time to time elect, for such periods, respectively, as it thinks fit, two of its members to be Chairman and Vice-Chairman.

Chairman
and Vice-
Chairman.

6. The names of the Chairman and Vice-Chairman and of the appointed and elected members of the Board shall be published by the ¹[Provincial Government] in the ²[Official Gazette].

Elections and
appointments
to be notified
in Gazette.

7. (1) The Chairman may resign his office by giving notice in writing to the Board; and on such resignation being accepted, shall be deemed to have vacated his office.

Term of office.

(2) The Vice-Chairman and any other appointed or elected member may resign his office by giving notice in writing to the Chairman; and, on such resignation being accepted by the Chairman, shall be deemed to have vacated his office.

(3) Subject to the provisions of this Act, the appointed or elected members shall hold office for a term of three years and may, on the expiration of such term, be re-appointed or re-elected.

(4) Notwithstanding the expiration of the term of three years mentioned in sub-section (3), an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

8. (1) The ¹[Provincial Government] may, by notification, remove the Chairman, Vice-Chairman or any member of a Board if he—

Removal of
members.

(a) is absent without leave for more than four months continuously from the jurisdiction of the Board;

(b) refuses to act or becomes incapable of acting as a member of the Board;

(c) is declared insolvent;

¹See foot-note 3 on p. 3, ante.

²See foot-note 1 on p. 4, ante.

In sub-section (1) of section 8,—

- (i) at the end of clause (d) omit the word "or"; and
- (ii) to clause (e) add the word "or" and after that clause insert the following clause, namely:—

"(f) being a member of the Board appointed or elected, as the case may be, to represent a particular body, interest or constituency, ceases to represent such body, interest or constituency."

(Omitted, added and inserted by West Ben. Act XV of 1954, section 4.)

[No. 53, dated the 11th June, 1954.]

¹ [Provincial Government], is absent without the consent of the Board from more than four consecutive meetings of the Board.

(2) The ¹ [Provincial Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

Casual
vacancies.

9. When the place of an appointed or elected member of a Board becomes vacant by his removal, resignation or death, a new member shall be appointed or elected in the manner provided in section 3, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided by section 3.

Allowances
and fees.

10. The members and staff of the Board and the members of Committees appointed by the Board shall be paid travelling and daily allowances of the prescribed amount and on the prescribed conditions for attending meetings of the Board, and may also be paid fees of the prescribed amount and on the prescribed conditions for attending meetings of the Board, or for performing any duty assigned to them by the Board for the purposes of this Act.

President at
meetings.

11. (1) The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes.

(2) In the absence of both the Chairman and Vice-Chairman, the members present at any meeting may elect one of their number to preside, who shall have a second or casting vote in all cases of equality of votes.

¹See foot-note 3 on p. 3, ante.

The Bengal State Aid to Industries Act, 1931.

of 1931.]

(Secs. 12—15.)

12. No member of a Board shall vote on any question coming before the Board for consideration in which (otherwise than in its general application to all persons and properties within the province) he has a pecuniary interest. Interested members not to vote.

13. (1) The Chairman, with the consent of the Board, may authorise the Vice-Chairman by an order in writing to exercise any of the powers conferred or to perform any of Delegation of functions of Chairman.

Page 7—

In section 14, after sub-section (2), add the following sub-section, namely:—

“(3) No recommendation for State aid made by the Board, no proceedings at meetings of the Board and no action taken by the Board shall be called in question by reason merely of—

(a) the existence of any vacancy in, or any defect in the constitution of, the Board, or of to tions.

(b) any defect or irregularity not affecting the merits of the case.”.

(Added by West Ben. Act XV of 1954, section 5.)

[No. 53, dated the 11th June, 1954.]

(v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons; and

(vi) generally, the carrying out of the purposes of this Act.

(2) Any regulation made under sub-section (1) which is repugnant to the provisions of any rule made under section 32 shall, to the extent of such repugnancy, but not otherwise, be void.

15. (1) If at any time it appears to the ¹[Provincial Government] that the Board is not properly performing the duties imposed upon it by or under this Act, the ¹[Provincial Government] may, after considering any explanation offered by the Board, by an order in writing specifying the reasons for so doing, remove all appointed and elected members of such Board and direct that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members or that all the vacancies shall be filled by appointment. Supersession of Board.

¹See foot-note 3 on p. 3, ante.

For section 16, substitute the following section, namely:—

"Functions of the

16. The functions of the Board shall be—

- (a) to receive applications for State aid;
- (b) to make such inquiries regarding applications as the Board deems necessary or as may be required by this Act;
- (c) to report to the State Government upon applications for State aid;
- (d) to frame schemes and programmes for such State action as the Board considers necessary for the steady and progressive development of industries in West Bengal for consideration of the State Government; and
- (e) to advise the State Government on any other industrial matter that may be referred to it for opinion."

(Substituted by West Ben. Act. XV of 1954, section 6.)

[No. 53, dated the 11th June, 1954.]

Page 8—

After section 17, insert the following section, namely:—

"Staff of the Board.

18. (1) The State Government shall sanction the staff of the Board and fix the scales of salaries and allowances of such staff. Such salaries and allowances shall be paid out of the Consolidated Fund of the State.

(2) The qualifications, the manner of appointment, the period of probation (if any), the age of superannuation and other terms and conditions of service (including in particular rules for the control, discipline and punishment) of the staff of the Board shall be such as may be prescribed."

(Inserted by West Ben. Act XV of 1954, section 7.)

[No. 53, dated the 11th June, 1954.]

¹[Provincial Government], for reasons to be recorded in writing, otherwise directs, be repayable within not more than ten or where the whole loan is secured on land or buildings or both within not more than twenty years after the date of the advance of the loan or, where the loan is advanced in instalments, after the date of the advance of the last instalment :

¹See foot-note 3 on p. 3, ante.

In sub-section (1) of section 19,—

(a) for the first proviso to clause (a), substitute the following proviso, namely:—

“Provided that—

- (i) no such loan shall ordinarily exceed fifty per cent. of the net value of the assets of the industry to which such loan is granted;
- (ii) loan up to seventy-five per cent. of the net value of the assets of the industry to which such loan is granted, may be granted where collateral security of homestead or agricultural land or other tangible assets of the owner of the industry are furnished, subject to the condition that the maximum amount of such loan shall not exceed seven thousand rupees in any one case;
- (iii) the net value of the assets of the industry to which such loan is granted shall be calculated after deducting the incumbrances on the industry subsisting on the date of the making of the application under section 16. Such net value and the value of the collateral security shall be ascertained by the Board in the prescribed manner:” ; and

(b) for clause (g) substitute the following clause, namely:—

Majesty
Govern-

“(g) the payment of a subsidy for—

- (i) the conduct of research, including research about marketing;
- (ii) the purchase of machinery; and”.

Eleventh

(Substituted by West Ben. Act XV of 1954, section 8.)

[No. 53, dated the 11th June, 1954.]

(h) subject to the prescribed conditions, the supply of machinery on the hire-purchase system.

(2) In the case of the grant of any of the forms of State aid specified in clauses (f) and (g) of sub-section (1), the [Provincial Government] shall ordinarily in the order granting such aid fix a period of years and a rate of interest on the capital invested in the industry so aided, and, if within such period the industry pays a rate of interest or a dividend in excess of the rate so fixed, the value of the aid granted, as ascertained by the prescribed authority in the

• See foot-note 3 on p. 3, ante.

These words were substituted for the words “property of the Local Government” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Page 10—

Dele-
tion
power of
the State
Govern-
ment to
give State
aid.

After section 19, insert the following section, namely:—

20. The State Government may delegate to the Director of Industries its power to grant State aid under section 19 on such terms and conditions and subject to such limitations or restrictions as it thinks fit.”.

(Inserted by West Ben. Act XV of 1954, section 9.)
[No. 53, dated the 11th June, 1954.]

aid.] Omitted by Sch. IV of the Government of India Order, 1937.

Industries
which may
be aided.

21. State aid may be given—

(a) in any of the forms specified in sub-section (1) of section 19 to—

- (i) a new or nascent industry,
- (ii) an industry to be newly established in an area where such industries are undeveloped, and
- (iii) a cottage industry, including industries conducted by groups or organisations of artisans ;

(b) in the forms specified in clauses (b) and (g) (i) of the said sub-section to any industry except agriculture; and

(c) in the form specified in clause (h) of the said sub-section, to agriculture :

Provided that no State aid shall be given to any joint-stock company unless the company is registered in India with a rupee capital, and the ¹[Provincial Government] approves the composition of the Board of Directors of the company :

Provided further that every recipient of State aid shall make such provision for the training of apprentices as may be prescribed.

Inspection
and returns.

22. The owner of any industry—

(i) when an application has been made for State aid to such industry ; or

(ii) during the continuance of State aid to such industry in any of the forms specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) of section 19 shall—

(a) comply with any general or special order of the ¹[Provincial Government] relating

¹See foot-note 3 on p. 3, ante.

of 1931.]

(Secs. 23, 24.)

to the inspection of the premises, buildings or plant or stock-in-trade, employed, or to be employed, for the purposes of the industry ;

- (b) permit the inspection by the prescribed person of all accounts relating to the industry ;
- (c) submit the accounts relating to the industry to such audit as may be prescribed ;
- (d) furnish in the prescribed manner to the prescribed person full returns of all products manufactured and sold both as regards description and quantity ;
- (e) maintain such special accounts as may be prescribed ; and
- (f) furnish such statements as the ¹[Provincial Government] may require.

23. (1) During the continuance of State aid to any industry under section 19 the profits of such industry shall, if distributed, be distributed only after interest due on debentures and loans has been paid and an amount reasonable in the opinion of the ¹[Provincial Government] has been set aside for depreciation or obsolescence of plant and buildings and a further amount which shall not be less than twenty-five *per cent.* of the net surplus available after provision for depreciation or obsolescence has been carried to a reserve fund to be utilised in the prescribed manner and payment made to a sinking fund for the purpose of repayment in the prescribed manner of any loan granted under the provision of clause (a) of sub-section (1) of section 19 or of any sum guaranteed by the ¹[Provincial Government] under the provisions of clauses (b), (d) or (e) of that sub-section.

Disposal of profits during continuance of State aid.

(2) No dividend shall be paid to shareholders and no profit shall be taken by the owner in excess of such percentage rate upon the amount of the paid-up capital invested in the industry as the ¹[Provincial Government] may fix from time to time, during the continuance of State aid to the industry.

24. The Board shall have power to receive donations, endowments or contributions from the public on such conditions as may be approved by the ¹[Provincial Government].

Power of Board to receive donations, etc.

¹See foot-note 3 on p. 3, *ante*.

(Secs. 25, 26.)

Method of recovery of money due.

25. All arrears of monies payable to the ¹[Provincial Government] under this Act, including any interest chargeable thereon and costs, if any, incurred, shall be recoverable as a public demand.

Power to Provincial Government to terminate aid on account of fault.

26. If the ¹[Provincial Government] decides for reasons to be recorded in writing to terminate aid in respect of an industry on any of the following grounds, namely:—

- (i) that any portion of the aid given has been misapplied, or
- (ii) that there has been a breach by the owner of the industry of the provisions of this Act or of any rule made thereunder or of any condition of the grant, or
- (iii) that the application on which the aid has been granted contained, or was accompanied by, any material statement by the owner which he knew to be false, or any intentional concealment by him of any material fact, which in the opinion of the ¹[Provincial Government] it was his duty to disclose, or that any such false statement or concealment was intentionally made in any inquiry made under this Act by or with the connivance of the owner or in any return under this Act, or in reply to any requisition for information under this Act, or
- (iv) that the Industry is being managed in such a manner as to endanger the repayment of the value of State aid granted thereto repayable under this Act,

the ¹[Provincial Government] may make an order that the aid be terminated and, notwithstanding anything contained elsewhere in this Act or in any other enactment, may proceed to recover from the owner as a public demand—

- (a) the whole amount of any loan outstanding, together with such interest as may be due thereon, or
- (b) in cases where the aid is given otherwise than by loan, the money value of the grant as fixed at the time when it was made, together with interest at a rate not exceeding twelve and a half *per cent.* from the date of the grant till the date of realisation, and

¹See foot-note 3 on p. 3, *ante*.

[1931.]

(Secs. 27—32.)

(c) in the cases mentioned in clause (a) or clause (b) the cost of recovery, and, if the ¹[Provincial Government] so directs, the cost of any inquiry made in connection therewith,

and such order shall be final.

27. The ¹[Provincial Government] may charge in respect of applications, inquiries, inspections and audit by whomsoever made under this Act, such fees, if any, as may be prescribed. Fees.

28. During the continuance of State aid to an industry in any of the forms specified in clauses (a), (b), (d) and (e) of sub-section (1) of section 19 the ¹[Provincial Government] may, by appointing directors or inspectors, or otherwise, take such steps as it deems advisable so to control the conduct of the industry as to safeguard the interest of the ¹[Provincial Government] therein. Supervision of assisted industry.

29. All sums payable under this Act shall, unless otherwise provided therein, be recoverable as if they were public demands. Recovery of sums due.

Act XLV of 1860.

30. Every person who acts on behalf of the ¹[Provincial Government] or the Board under this Act (including every person who conducts an inquiry under this Act) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and no suit, prosecution or other legal proceeding shall lie against any such or any other person for anything which is in good faith done or intended to be done by him. Powers and protection of persons acting under this Act.

Page 13—

In sub-section (2) of section 32,—

(i) for clause (a), substitute the following clause, namely:— ty of in of icial nment.

“(a) the manner of appointment of the member of the Board referred to in clause (e) of sub-section (1) of section 3 and the manner of election of the members of the Board referred to in clauses (g) and (h) of sub-section (1) of that section;” and of icial nment to ules.

(ii) after clause (h) insert the following clause, namely:—

“(c) the matters referred to in sub-section (2) of section 18;”.

(Substituted and inserted by West Ben. Act XV of 1954, section 10.)

[No. 53, dated the 11th June, 1954.]

[Ben. Act III of 1931.]

(Sec. 32.)

- 1* * * *
- (e) the manner of securing and repaying the loans referred to in clause (a) of sub-section (1) of section 19 ;
 - (f) the manner of ascertaining the value of the assets referred to in clause (a) of sub-section (1) of section 19 ;
 - (g) the manner of securing and repaying the amounts referred to in clauses (b), (d) and (e) of sub-section (1) of section 19 ;
 - (h) the conditions of the supply of machinery on the hire-purchase system under clause (h) of sub-section (1) of section 19 ;
 - (i) the authority by which and the manner in which the values referred to in sub-sections (2) and (3) of section 19 shall be ascertained ;
 - (j) the provision for training referred to in the second proviso to section 21 ;
 - (k) the person referred to in sub-clause (b) of clause (ii) of section 22 ;
 - (l) the audit referred to in sub-clause (c) of clause (ii) of section 22 ;
 - (m) the person to whom and the manner in which the returns referred to in sub-clause (d) of clause (ii) of section 22 shall be furnished ;
 - (n) the accounts referred to in sub-clause (e) of clause (ii) of section 22 ;
 - (o) the manner of utilising the amount carried to a reserve fund under sub-section (1) of section 23 and the manner of repayment of any loan or any sum guaranteed by the ²[Provincial Government] referred to in that sub-section ;
 - (p) the fees referred to in section 27 ; and
 - (q) generally, to regulate the conduct of its duties, the management of its proceedings, and the preparation and submission to the ²[Provincial Government] of the minutes thereof by the Board.

¹Clauses (c) and (d) were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 3, *ante*.

Bengal Act I of 1932

(THE BENGAL MOTOR VEHICLES TAX ACT, 1932.)¹

[24th March 1932.]

An Act to provide for the imposition and levy of a tax on motor vehicles in Bengal.

WHEREAS it is expedient to raise funds for additional expenditure on roads in Bengal and for that purpose to impose a tax on motor vehicles in Bengal ;

Preamble.

5 & 6 Geo.
V, c. 61 ; 6
& 7 Geo.
V, c. 37 ; 9
& 10 Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Motor Vehicles Tax Act, 1932.

Short title,
commencement
and extent.

(2) It shall come into force on such date² as the [Provincial Government] may, by notification in the [Official Gazette], appoint.

(3) It extends to the whole of Bengal.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "certificate of registration" means a certificate of registration of a motor vehicle issued under the Indian Motor Vehicles Act, 1914 ;

(2) "registering authority" means the authority empowered under the Indian Motor Vehicles Act, 1914, to register motor vehicles ;

(3) "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled or which may be propelled, on a road by electrical or mechanical power either entirely or partially ;

VIII of
1914.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1931, Pt. IV, page 43 ; and for report of the Select Committee, see *ibid*, p. 100 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1931, Vol. XXXVII, p. 121 and Vol. XXXVIII No. I, p. 307.

²The Act came into force on the 1st April, 1932, *vide* Notification No. 1140M., dated the 18th March, 1932, published in the *Calcutta Gazette*, dated the 24th March, 1932, Pt. I, p. 696.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*", *ibid*.

[Ben. Act I

(Secs. 3, 4.)

- (4) "prescribed" means prescribed by rules made under this Act;
- (5) "the tax" means the tax imposed under this Act; and
- (6) "Taxing Officer" means an officer appointed under section 3.

Appointment
of Taxing
Officers.

3. The [Provincial Government] may, by notification in the [Official Gazette], appoint such persons or agency as it may think fit to be Taxing Officers and such notification

For sub-section (1) of section 4, substitute the following sub-section, namely:—

Imposition
tax.

"(1) A tax at the rate specified in the Schedule shall be imposed on all motor vehicles kept for use in West Bengal."

(Substituted by West Bengal Act XVII of 1951, section 2.)

[No. 48, dated the 1st April, 1952.]

THIS ACT

"(2) The tax imposed under sub-section (1) shall be payable for the year and in advance by the person who keeps a motor vehicle for use :

Provided that a Taxing Officer may allow payment of the tax for one or more quarterly periods at the rate, for each such quarterly period, of one quarter of the tax payable for the year.

"(3) If a Taxing Officer is satisfied that a motor vehicle has not been used for any complete calendar month in the year, he shall refund or remit in respect of the said vehicle the tax payable for the year for every complete calendar month in which the vehicle has not been used.

VOLUME V.

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Page 16—

To sub-section

"Provided that if a motor vehicle has been used for transport of passengers outside Bengal, the tax payable in respect of such vehicle shall be remitted in respect of the said vehicle for every complete calendar month in which the vehicle has not been used."

(Added by

Page 16—

To sub-section (2) of section 4, add the following further proviso, namely:—

"Provided further that in the case of a motor vehicle temporarily registered under section 25 of the Motor Vehicles Act, 1939, only one-twelfth of the tax payable for the year shall be payable in respect of such vehicle as so registered."

(Added by West Ben. Act IX of 1949, section 2.)

[No. 44, dated the 2nd August, 1949.]

removed.

(Added by West Bengal Act XII of 1949, section 2, the First Schedule.)

[No. 43, dated the 5th June, 1949.]

of 1932.]

(Secs. 5, 6.)

heard, if he so desires, require him to pay any tax or additional tax which the Taxing Officer may find such person liable to pay under the provisions of this Act and may also impose on him a penalty which may extend to half the amount of the tax to which he is found liable.

5. When any person has paid the tax in respect of a motor vehicle he shall be entitled, on production of a certificate signed by the registering authority stating that—

Refund on surrender of registration certificate.

(a) the certificate of registration and the registration card granted in respect of such vehicle has been surrendered, to a refund for each complete calendar month of the period for which such tax has been paid and which is unexpired on the date on which the certificate of registration was surrendered, of an amount equal to one-twelfth of ¹[the tax payable for the year in respect of such vehicle], or

(b) an application for the registration or for the renewal of the registration of such vehicle has been refused, to a refund of the tax paid.

6. (1) Every person who ²[keeps a motor vehicle for use] shall fill up and sign a declaration in the prescribed form stating truly the prescribed particulars and shall deliver the declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

Declaration by person keeping a motor vehicle for use.

(2) Where a motor vehicle is altered so as to render the person who ³[keeps such vehicle for use] liable to the payment of an additional tax under section 7, such person shall fill up and sign an additional declaration, in the prescribed form showing the nature of the alterations made and containing the prescribed particulars and shall deliver such additional declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the additional tax payable under section 7 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

(3) Every person who owns any motor vehicle which is let for hire otherwise than on a hire-purchase agreement shall, for the purposes of this Act, be deemed to be the person who ³[keeps such vehicle for use].

¹These words were substituted for the words "the annual rate of the tax payable on such vehicle" by s. 4 of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²These words were substituted for the words "keeps or uses a motor vehicle" by s. 5(1), *ibid*.

³These words were substituted for the words "keeps or uses such vehicle" by s. 5 (2) *ibid*.

(Secs. 7—12).

Payment of
additional
tax.

7. Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the person who ¹[keeps such vehicle for use] shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered, and the registering authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid.

Receipt for tax.

8. The Taxing Officer shall grant and deliver to every person, who pays to him the tax or additional tax in respect of any motor vehicle, a receipt in which shall be specified the particulars of the tax paid and such other particulars as may be prescribed.

Token to be
exhibited on
motor vehicles.

9. (1) The Taxing Officer shall at the time of granting a receipt for the tax deliver to the person paying the tax a token of such form and containing such particulars as may be prescribed.

(2) Every person to whom such token is delivered shall cause it to be exhibited in the prescribed manner on the vehicle in respect of which the tax is paid.

Contribution
payable to the
Corporation of
Calcutta.

10. (1) The ²[Provincial Government] shall pay annually to the Corporation of Calcutta the sum of four and a half lakhs of rupees being approximately the net amount of taxes derived by the Corporation from the taxation of motor vehicles under the Calcutta Municipal Act, 1923, for the year ending on the 31st March, 1930, to compensate the said Corporation for the future loss of revenue under this head.

Ben. Act
III of
1923.

(2) The contribution fixed under sub-section (1) shall be paid in such instalments, in such manner and on such dates as the ²[Provincial Government] may determine.

11. [*Application of the proceeds of the tax.*] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Power to make
rules.

12. (1) The ²[Provincial Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

¹These words were substituted for the words "keeps on uses such vehicle" by s. 6 of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²See foot-note 3 on p. 15, ante.

of 1932.]

(Sec. 13.)

(2) In particular and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules for all or any of the following purposes, namely :—

- (a) to prescribe the form of any declaration, certificate, receipt or token, the particulars to be stated therein ²[the manner of exhibiting a certificate or token on a motor vehicle or trailer, and the condition in which such certificate or token shall be maintained],
- (b) to prescribe what shall be deemed to be ³[a year or a quarterly period,] for the purposes of section 4,
- (c) to prescribe the powers and duties of the Taxing Officer and of the registering authority,
- (d) to regulate the manner in which refunds or deductions or exemptions may be claimed, and
- (e) to regulate the method of assessing and recovering the tax.

(3) All rules made under this section shall be published in the ⁴[*Official Gazette*].

13. Whoever—

Penalties for certain offences.

- (a) ⁵[keeps for use] a motor vehicle without having paid the tax or additional tax in respect of such vehicle, or
- (b) delivers a declaration or additional declaration wherein the particulars required by or under this Act to be therein set forth are not fully and truly stated,

shall be punishable with fine which may extend to one and a-half times, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to twice the amount of the ⁶[tax payable for the year] for the motor

¹See foot-note 3 on p. 15, *ante*.

²These words were substituted for the words "and the manner of exhibiting such token on a motor vehicle" by s. 8(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

³These words were substituted for the words "quarterly periods" by s. 8(2), *ibid*.

⁴See foot-note 4 on p. 15, *ante*.

⁵These words were substituted for the words "keeps or uses" by s. 9(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

⁶These words were substituted for the words "annual tax payable" by s. 9(2), *ibid*.

THE ACT

*Pages 21-22—

For the First Schedule, substitute the following Schedule, namely:—

able

...are not paying for hire.

Rate of tax payable
for the year.

| | |
|------------------------------|--|
| (1) Motor cycles .. | Rs. 18. |
| (2) Motor cycle combinations | Rs. 24. |
| (3) Motor cars .. | Rs. 12 for every 500 lbs. unladen weight or part thereof up to 2,500 lbs. plus Rs. 20 for every additional 500 lbs. unladen weight or part thereof, above 2,500 lbs. |

*This correction should not be inserted until West Bengal Act XVII of 1951 is brought into force.

be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) above, as the case may be for such bus.

Rate of tax payable
for the year.

(2) Vehicles other than buses, seating,
exclusive of the driver and the
conductor,—

(a) not more than 4 persons—

| | | |
|----------------|---------|---|
| (i) 3-wheelers | Rs. 150 | } if unladen weight is not above 2,500 lbs. |
| 4-wheelers | Rs. 200 | |
| (ii) .. | Rs. 225 | if unladen weight is above 2,500 lbs. |

(b) more than 4 persons Rs. 250 for 5 persons *plus*
Rs. 50 for
every addition-
person (d)
beyond 5 :

Provided that if a vehicle for carrying passengers plying for hire, which is not a bus, is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) above, as the case may be, for such vehicle.

(The First Schedule.)

| [Rate of tax payable for the year.] | | |
|--|--|--------------------------------------|
| | Vehicles fitted entirely with pneumatic tyres. | Other vehicles. |
| <i>IV.—Vehicles for transport of goods.</i> | | |
| (a) Not exceeding twelve hundred-weight in weight unladen. | Fifty rupees | Seventy-five rupees. |
| (b) Exceeding twelve hundred-weight but not exceeding one ton in weight unladen. | One hundred rupees | One hundred and fifty rupees. |
| (c). Exceeding one ton, but not exceeding two tons in weight unladen. | One hundred and twenty-five rupees. | One hundred and seventy-five rupees. |
| (d) Exceeding two tons, but not exceeding three tons in weight unladen. | One hundred and fifty rupees. | Two hundred rupees. |
| (e) Exceeding three tons, but not exceeding four tons in weight unladen. | Two hundred rupees | Two hundred and fifty rupees. |
| (f) Exceeding four tons, but not exceeding five tons in weight unladen. | Three hundred rupees. | Three hundred and fifty rupees. |
| (g) Exceeding five tons | Four hundred rupees. | Five hundred rupees. |
| (h) If used for drawing a trailer in addition to the tax payable under (a) to (g), for each trailer: | Fifty rupees | .. Fifty rupees. |

*Provided that, if one trailer is used with more than one vehicle, only one tax shall be chargeable under (h) in respect of such trailer for all such vehicles.

¹These words were substituted for the words "Annual rate of tax" by s. 11(5) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²This proviso was substituted for the original proviso by s. 11(6), *ibid*.

The Bengal Motor Vehicles Tax Act, 1932. 23
of 1932.]

THE SECOND SCHEDULE.

(See section 17.)

Amendments to the Calcutta Municipal Act, 1923.

[Amendments incorporated in Ben. Act III of 1923.]

Bengal Act III of 1932.

(THE GARDEN REACH MUNICIPALITY ACT, 1932.)¹

(7th April 1932.)

An Act to provide for the exclusion of the Garden Reach area from the limits of the Corporation of Calcutta and to constitute that area as a Municipality under the Bengal Municipal Act, 1884.

Ben. Act
III of
1884.

WHEREAS it is expedient to provide for the exclusion of the Garden Reach area from the limits of the Corporation of Calcutta and to constitute that area as a Municipality under the Bengal Municipal Act, 1884 ;

Preamble.

It is hereby enacted as follows :—

1. This Act may be called the Garden Reach Municipality Act, 1932.

Short title.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) " Garden Reach area " means the area which formed the Garden Reach Municipality at the commencement of the Calcutta Municipal Act, 1923, excluding such portions of that area as had then been or have up to the commencement of this Act been acquired by the Commissioners for the Port of Calcutta for the construction of King George's Dock and the works in connection therewith ;

Ben. Act
III of
1923.

(2) " Garden Reach Municipality " means the new Garden Reach Municipality constituted under section 8 ;

(3) " Former Garden Reach Municipality " means the Municipality known as the Garden Reach Municipality as it existed at the commencement of the Calcutta Municipal Act, 1923.

3 to 7. *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1931, Part IV, page 72; and for report of the Select Committee—see *ibid.*, page 112; and for Proceedings in Council—see the *Bengal Legislative Council Proceedings*, Vol. XXXVII, p. 223 and Vol. XXXVIII, No. 1, p. 356.

(Secs. 8—11.)

Constitution
of Garden Reach
Municipality.

8. Notwithstanding anything contained in sub-section (2) of section 2 of the Calcutta Municipal Act, 1923, or in section 8 of the Bengal Municipal Act, 1884, the ¹[Provincial Government] may, by notification in the ²[Official Gazette], constitute the Garden Reach area as a Municipality for the purposes of the Bengal Municipal Act, 1884, with effect from such date as may be specified in the notification and thereupon the Bengal Municipal Act, 1884, and the Bengal Food Adulteration Act, 1919, shall notwithstanding the provisions of sub-section (2) of section 2 of the Calcutta Municipal Act, 1923, be deemed to be re-enacted and in force in the said area from such date.

Ben. Act
III of
1923.
Ben. Act
III of
1884.

Ben. Act
VI of
1919.

Such notification shall specify the boundaries of the said Municipality, and the number of the Commissioners, and may further specify whether the name of the Municipality shall or shall not be included in the first or second schedule.

Pages 28-28—

Strike out sections 9, 10, 11, 13, 15, 19, and the schedule, and insert the following note, namely:—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the ~~24th~~ July, 1947.]
by notification in the ~~[Official Gazette]~~.

for two years.

(2) They shall hold office for two years from the date of the constitution of the Garden Reach Municipality under section 8.

Provincial
Government to
pass necessary
orders for first
election of
Commissioners.

10. For the purpose of the first election of Commissioners of the Garden Reach Municipality, the ¹[Provincial Government] shall make such orders not inconsistent with the provisions of the Bengal Municipal Act, 1884, as it thinks fit in respect of the division of the Municipality into wards, the number of Commissioners to be elected for each ward, the qualifications of candidates for election as Commissioners, the qualifications required to entitle any person to vote for a candidate for election, the mode of election and the authority who shall decide disputes thereunder.

First election of
Commissioners.

11. The Commissioners of the Garden Reach Municipality appointed under the provision of sub-section (1) of section 9 shall do all things necessary for the purpose of holding the first election of Commissioners of the said Municipality in time for the body of Commissioners newly elected and appointed to enter office on the expiration of the period referred to in sub-section (2) of section 9.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²*ibid.* These words were substituted for the words "Calcutta Gazette,"

[1932.]

(Secs. 12—15.)

12. On the publication of the notification referred to in section 8 the following consequences shall ensue, namely :—

Consequences of constitution of Garden Reach Municipality.

On and from the date specified in the said notification as the date of the constitution of the Garden Reach area as a Municipality—

(1) The orders of the ¹[Provincial Government] made under sub-section (2) of section 7 shall commence to have effect.

(2) All movable property apportioned by the Committee to the Garden Reach Municipality and all immovable property in Garden Reach area and all interests of whatever nature therein vested in the Corporation of Calcutta shall vest in the Commissioners of the Garden Reach Municipality.

(3) All rights and liabilities attaching to the Corporation of Calcutta from contracts, agreements or leases, to which the Corporation of Calcutta is a party in respect of and solely affecting the Garden Reach area shall vest in the Commissioners of the Garden Reach Municipality.

13. The valuations made, rates and taxes imposed, and fees levied by the Corporation of Calcutta in respect of the Garden Reach area under Part IV of the Calcutta Municipal Act, 1923, shall continue to be in force in the Garden Reach Municipality for one year from the date of the constitution of the Municipality under section 8 and shall be deemed to be valuations, rates, taxes, fees, or tolls made, assessed, levied or imposed under Part IV of the Bengal Municipal Act, 1884.

Valuations, etc., under the Calcutta Municipal Act, 1923, to remain in force for one year.

Ben. Act III of 1923.

Ben. Act III of 1884.

14. Subject to the provisions of this Act the rules, orders, by-laws, regulations and directions made or issued under the Bengal Municipal Act, 1884, and in force in the former Garden Reach Municipality at the commencement of the Calcutta Municipal Act, 1923, shall from the date of the constitution of the Garden Reach Municipality under section 8 be deemed to be revived and in force in the Garden Reach Municipality, until they are superseded.

Revival of rules, etc., of former Garden Reach Municipality.

15. Notwithstanding anything contained in this or any other Act the Corporation of Calcutta shall, for a period of three years from the date of constitution of the municipality by the notification referred to in section 8, be entitled to recover all arrears of rates, taxes and fees due from the Garden Reach

Saving of power to recover arrears of taxes.

¹See foot-note 1 on p. 26, *ante*.

(Secs. 16—20.)

area at the time when the Garden Reach Municipality is constituted and shall for the purpose have and exercise all the powers in this behalf conferred upon it by the Calcutta Municipal Act, 1923.

Ben. Act
III of
1923.

Restoration to
Garden Reach
Municipality
of movable
property and
records.

16. The Corporation of Calcutta shall make over to the Garden Reach Municipality all furniture, records (other than records relating to King George's Dock area and required by the Corporation of Calcutta for their own purpose), movable property and other assets of the former Garden Reach Municipality remaining in the possession of the Corporation, and shall likewise make over all documents and records relating to the Garden Reach area which have come into existence since the commencement of the Calcutta Municipal Act, 1923.

Power to adopt
or alter acts and
orders of Corpor-
ation of
Calcutta.

17. Subject to the provisions of the Bengal Municipal Act, 1884, it shall be competent for the Commissioners of the Garden Reach Municipality to adopt, amend, vary or rescind anything done or order made by the Corporation of Calcutta in respect of the Garden Reach area.

Ben. Act
III of
1884.

Duty of
Commissioners
to execute
original
improvement
works.

18. (1) Notwithstanding anything contained in Part III of the Bengal Municipal Act, 1884, or elsewhere in that Act, the Commissioners of the Garden Reach Municipality shall annually reserve the sum of one lakh and twenty-five thousand rupees out of the sum of rupees two and a half lakhs to be received annually from the Corporation of Calcutta under section 90A of the Calcutta Municipal Act, 1923, for expenditure on new works of improvement in the Garden Reach Municipality approved by the ¹[Provincial Government], and meeting of loans charges for such works.

(2) The ¹[Provincial Government] may make rules for the application of the sum reserved under sub-section (1) and the form of the accounts to be maintained in connection therewith.

Amendment of
Calcutta
Municipal Act,
1923.

19. With effect from the date when the Garden Reach Municipality is constituted under section 8, the Calcutta Municipal Act, 1923, shall be amended in the manner set forth in the schedule.

General powers
of the Provincial
Government to
remove unfore-
seen difficulties.

20. If any difficulty arises in carrying out the provisions of this Act the ¹[Provincial Government] may notwithstanding anything contained elsewhere in this Act or in any other Act by order do anything which appears to it to be necessary to give effect to the purposes of this Act.

¹See foot-note 1 on p. 26, *ante*.

of 1932.]

*(The Schedule.—Amendments to be made in the Calcutta
Municipal Act, 1923.)*

THE SCHEDULE.

Amendments to be made in the Calcutta Municipal Act, 1923.

[Amendments incorporated in Ben. Act III of 1923.]

Bengal Act V of 1932

[THE ELEPHANTS PRESERVATION (BENGAL AMENDMENT) ACT, 1932.]¹

(9th June 1932.)

An Act to amend the Elephants Preservation Act, 1879, in its application to Bengal.

VI of
1879.

WHEREAS it is expedient to amend the Elephants Preservation Act, 1879, in its application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Elephants Preservation (Bengal Amendment) Act, 1932. Short title.

2. The Elephants Preservation Act, 1879, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided. Application of Act.

3. To section 3 of the said Act the following clause shall be added, namely:— Amendment of section 3 of Act VI of 1879.

“(d) such elephant is proclaimed under section 5A.”

4. After section 5 of the said Act, the following section shall be inserted, namely:— New section 5A.

Proclaim-
ed wild
elephants
may be
killed.

“5A. The Collector or Deputy Commissioner of any district, if satisfied that any wild elephant has become dangerous to human life and property may, subject to such rules as may for the time being be in force under this Act, issue a proclamation giving a description of the elephant and offering the reward fixed by the ²[Provincial Government] from time to time for the killing of proclaimed wild elephants to any person who shall kill the elephant described in the proclamation.”

5. After clause (d) of section 6 of the said Act the following clause shall be inserted, namely:— Amendment of section 6.

“(e) the issue of a proclamation under section 5A.”

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, page 80; and for Proceedings in Council—see the Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 3, p. 804.

²These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act VIII of 1932

(THE BENGAL RHINOCEROS PRESERVATION ACT, 1932.)¹

(23rd June 1932.)

An Act to provide for the preservation of wild rhinoceros.

WHEREAS it is expedient to provide for the preservation of wild rhinoceros in Bengal ;

• It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Rhinoceros Preservation Act, 1932. Short title and extent.

(2) It extends to the whole of Bengal.

2. No person shall kill, injure or capture, or attempt to kill, injure or capture, a wild rhinoceros, unless— Killing, injuring or capturing of wild rhinoceros prohibited.

(a) in defence of himself or some other person ; or

(b) with the permission of the ²[Provincial Government] given in a license issued under rules to be made in this behalf by the ²[Provincial Government].

3. (1) Whoever in contravention of section 2, kills, injures or captures, or attempts to kill, injure or capture, a wild rhinoceros, shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both. Penalty for contravening section 2.

(2) Whoever having been convicted of an offence under sub-section (1) of this section, is again convicted of an offence thereunder shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

4. Every wild rhinoceros killed or captured ³[in Bengal] by any person otherwise than with the permission of the ²[Provincial Government] given under section 2, and all parts of such rhinoceros shall be the property of the ²[Provincial Government]. Rhinoceros killed or captured to be property of Government.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, page 79 ; and for Proceedings in Council—see the Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 3, p. 806.

²These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were inserted by s. 2 of the Bengal Rhinoceros Preservation (Amendment) Act, 1937 (Ben. Act II of 1938).

(Secs. 4A—7.)

Possessing, selling or buying of any part of rhinoceros prohibited.

14A. No person shall without the permission of the Provincial Government possess, sell or buy, or offer to sell or buy, any part of a rhinoceros unless he has reason to believe that such rhinoceros is not the property of the Provincial Government.

Explanation.—The expression “reason to believe” occurring in this section has the meaning assigned to it in section 26 of the Indian Penal Code.

Penalty for contravening section 4A.

4B. (1) Whoever in contravention of section 4A Act XLV of 1860. possesses, sells or buys, or offers to sell or buy, any part of a rhinoceros, shall be punished with fine which may extend to one thousand rupees.

(2) Whoever having been convicted of an offence under sub-section (1) of this section is again convicted of an offence thereunder, shall be punished with fine which may extend to two thousand rupees.

Duty to report killing, injuring or capturing of rhinoceros.

5. In the event of any person killing, injuring or capturing a wild rhinoceros in defence of himself or of some other person, he shall within three days of such event report the fact in writing to the officer-in-charge of the nearest police-station or to the Forest Officer or the District or Subdivisional Magistrate within whose jurisdiction the event took place.

Penalty for contravention of section 5.

6. Whoever without reasonable excuse omits to make the report referred to in section 5, shall be punished with fine which may extend to five hundred rupees.

Amendment of Act VIII of 1912.

7. The Wild Birds and Animals Protection Act, 1912, shall, in its application to Bengal, be amended as follows, namely:—

In clause (ii) of the schedule to the said Act the word “rhinoceroses,” shall be omitted.

¹Sections 4A and 4B were inserted by s. 3 of the Bengal Rhinoceros Preservation (Amendment) Act, 1937 (Bengal Act II of 1938).

Bengal Act X of 1932

(The Bengal Opium Smoking Act, 1932.)¹

(20th October 1932.)

An Act to provide for the control of the practice of smoking prepared opium.

WHEREAS it is expedient to control the practice of smoking prepared opium in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Opium Smoking Act, 1932.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such local areas and on such dates as the ³[Provincial Government] may, by notification², direct, and the ³[Provincial Government] may, by notification, withdraw this Act from any local area.

2. In this Act, unless there is anything repugnant in the subject or context—

(1) "notification" means a notification published in the ⁴[Official Gazette];

(2) "prepared opium" means any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and includes the dross or other residue remaining after opium is smoked ;

(3) "registered" means registered under the provisions of this Act as a smoker of prepared opium ;

(4) "place" includes a building, house, shop, booth, tent, vessel, raft and vehicle and any part thereof ;

Short title,
local extent
and
commencement.

Definitions.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1931, Pt. IV, page 54 ; for report of the Select Committee, see *ibid*, 1932, Pt. IV, p. 92 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVII, p. 133, Vol. XXXVIII, No. 1, p. 364 and Vol. XXXIX, No. 2, p. 38.

²The Act came into force on the 1st June 1933, except the districts of Darjeeling and Chittagong Hill-tracts—*vide* notification No. 1753 Ex., dated the 28th March 1933, published in the *Calcutta Gazette*, dated the 6th April 1933, Pt. I, p. 539.

The Act came into force in Darjeeling on the 1st June 1935—*vide* notification No. 99 T.—R., dated the 27th April 1935, published in the *Calcutta Gazette*, dated the 9th May 1935, Pt. I, p. 839.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*".
ibid.

5 and 6
Geo. V,
c. 61 ;
6 and 7
Geo. V,
c. 37 ;
9 and 10
Geo. V,
c. 101.

(Secs. 3—6.)

(5) "Collector" means—

(i) in the Calcutta district, any person appointed under clause (b) of section 7 of the Bengal Excise Act, 1909, to exercise all the powers and to perform all the duties of the Collector in that district under that Act; and

Ben. Act
V of 1909.

(ii) elsewhere, the chief officer in charge of the revenue administration of a district.

Smoking of
prepared
opium.

3. Whoever, not being registered, smokes prepared opium shall be punished for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and for every such subsequent offence with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Presumption
of smoking
prepared
opium in
certain cases.

4. If any person, not being registered, is found in possession of prepared opium or of any apparatus used for the smoking of, or in the manufacture of, prepared opium, it shall be presumed, until the contrary is proved, that such person smokes prepared opium.

Manufacture,
possession or
sale of
prepared
opium.

5. Whoever manufactures, possesses, sells, keeps or exposes for sale or attempts to sell any prepared opium, or assists any other person, whether an opium smoker or not, in the manufacture of prepared opium shall be punished with imprisonment which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Exception.—Manufacture or possession for his own use by a registered opium smoker of prepared opium not exceeding one tola in weight or such other lesser quantity as the ¹[Provincial Government] may, by notification, direct, shall not be an offence under this section.

Keeping
or having
charge of
place
used for
smoking
prepared
opium.

6. Whoever opens, keeps or uses any place or permit, any place to be used, for the purpose of enabling two or more persons, whether registered or not, to meet together to smoke prepared opium or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the said purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

¹See foot-note 3 on p. 35, ante.

[1932.]

(Secs. 7—10.)

7. If two or more persons, whether registered or not, assemble in any place for the purpose of smoking prepared opium, each such person shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Smoking of prepared opium in assembly of two or more.

8. If any prepared opium or any apparatus used for smoking, or in the manufacture of, prepared opium is found in any place where two or more persons, whether registered or not, are assembled, it shall be presumed until the contrary is proved that the place is used, and that the persons are present in such place, for the purpose of smoking prepared opium.

Presumption from presence of prepared opium, etc., in certain places.

9. The ¹[Provincial Government] may, by notification, make rules providing for—

Power of Provincial Government to make rules for registration of opium smokers.

- (1) the registration of persons who are opium smokers and for their identification, and
- (2) the method of registration, the fee payable for such registration, and the form of the register and the maintenance thereof:

Provided that no person shall be registered as an opium smoker who is below the age of twenty-five years :

Provided also that, subject to such exceptions as the ¹[Provincial Government] may by rule prescribe, no person shall be registered as an opium smoker after a date to be fixed in this behalf, by notification, by the ¹[Provincial Government].

10. If a Collector, a Presidency Magistrate, or a Magistrate of the first class, upon information received and after such inquiry, if any, as he considers necessary, has reason to believe that any place is used for the commission of an offence under this Act, he may, after recording the substance of the information, issue a warrant to an Excise Officer not below the rank of Sub-Inspector authorizing him—

Power to enter and search any place and to seize articles and to arrest persons found in such place.

- (a) to enter such place by day or night with such assistants as such officer may consider necessary ;
- (b) to search all parts of such place in which such officer has reason to believe that any prepared opium or any apparatus for the smoking of such opium or for the manufacture thereof, is concealed and all or any persons whom he may find in such place ;

¹See foot-note 3 on p. 35, *ante*.

(Secs. 11—13.)

- (c) to arrest any person found in such place whom he has reason to believe to be guilty of an offence under this Act ; and
- (d) to seize all prepared opium and apparatus for the smoking or for the manufacture thereof which may be found in such place.

Application
of the Code of
Criminal
Procedure, 1898,
to warrants and
searches under
section 10.

11. (1) The provisions of the Code of Criminal Procedure, 1898, shall apply to the execution of warrants and to searches made under section 10. Act V of 1898.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

Report to be
made in case of
arrest or
seizure.

12. Whenever any officer makes an arrest or seizure under this Act, he shall without delay, and in any case within twenty-four hours, forward every person arrested and every thing seized with full particulars of the arrest or seizure to the Collector or to the Magistrate, as the case may be, by whom the warrant was issued. In case of an arrest or seizure under a warrant issued by the Collector the said officer shall, unless the Collector proceeds under section 13, within the aforesaid period of twenty-four hours, forward the person or thing produced before the Collector to a Magistrate having jurisdiction to try the case together with full particulars of the arrest or seizure.

Powers of
Collector to
investigate
offences.

13. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to try.

(2) A Collector may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise any of the powers conferred upon a police officer making an investigation, or upon an officer in charge of a police-station, by section 160 to 171 of the Code of Criminal Procedure, 1898.

(3) A Collector may without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any persons concerned, or supposed to be concerned, in any offence which he has investigated.

(4) As soon as an investigation by a Collector has been completed, if it appears to him that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the Collector shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police report) to a Magistrate having jurisdiction to try the case and empowered to take cognizance of offences on police reports.

of 1932.]

(Secs. 14—19).

14. Whenever any person arrested under this Act is prepared to furnish bail to the satisfaction of the officer making the arrest, he shall be released on bail, or at the discretion of the officer making the arrest on his own bond.

Bail and security.

Ben. Act V of 1909.

15. Every officer mentioned in section 71 of the Bengal Excise Act, 1909, shall be bound to give reasonable aid to an Excise officer in carrying out the provisions of this Act upon request made by such officer.

Aid to Excise officer.

16. On the conclusion of a trial for an offence under this Act the Magistrate may order that any prepared opium and any instrument or appliance in respect of, or by means of which such offence has been committed, or appears to have been committed, or any receptacle, package or covering in which such prepared opium, instrument or appliance was found, and any other contents of such receptacle, package or covering shall be confiscated or destroyed.

Power of Magistrate to confiscate or destroy articles seized.

17. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Offences triable by Presidency Magistrate or Magistrate of first class.

18. No Magistrate shall take cognizance of any offence under this Act except on the complaint or report of an Excise officer not below the rank of a Sub-Inspector.

Cognizance of offences.

19. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

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Bengal Act XII of 1932

(THE BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.)

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THE SCHEDULE.

Bengal Act XII of 1932

(THE BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.)¹

(20th October 1932.)

*An Act to provide for suppressing the terrorist movement in
Bengal.*

• WHEREAS it is expedient to make special provisions for the purpose of suppressing the terrorist movement in Bengal and to provide for the speedier trial of offences committed in furtherance of or in connection with the said movement ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 & 6
Geo. V,
c. 61 ; 6
& 7 Geo.
V, c. 37 ; 9
& 10
Geo. V,
c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Suppression of Terrorist Outrages Act, 1932.

Short title,
extent and
duration.

(2) This section, section 2, ²[Chapters II and III] and the schedule extend to the whole of Bengal. The ³[Provincial Government] may, by notification in the ⁴[*Official Gazette*], extend any or all of the provisions of Chapter I to any area in Bengal.

Ben. Act
VI of 1930.

(3) This Act shall continue in force as long as the Bengal Criminal Law Amendment Act, 1930, remains in force.

• ¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Part IV, page 378 ; for Report of the Select Committee, see *ibid.*, page 385 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Volume XXXIX, No. 2, page 70 ; *ibid* No. 5, page 331 ; *ibid* No. 6, pages 24, 96 and 125.

As regards appeal to the High Court of Judicature at Fort William in Bengal from sentences of Special Magistrates under this Act, see section 3 of the Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932 (XXIV of 1932), and as regards the exclusion of interference of Courts with proceedings under this Act, see section 5 of the said Act.

²These words and figures were substituted for the word and figure " Chapter II " by s. 22 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

³These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937

⁴These words were substituted for the words "*Calcutta Gazette*", *ibid.*

(Chapter I.—Emergency Powers.—Secs. 2—4.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "absconder" means a person against whom a warrant is in force on account of an offence under the Indian Penal Code or any other law or in respect of whom an order of arrest has been made under sub-section (1) of section 2 ¹[or sub-section (1) of section 2A] of the Bengal Criminal Law Amendment Act, 1930; Act XLV of 1860.
- (b) "the Code" means the Code of Criminal Procedure, 1898; ²Ben. Act VI of 1930.
- (c) "scheduled offence" means any offence specified in the schedule to this Act; ³[and
- ³(d) "the appropriate Government" means, in relation to any of the matters enumerated in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to any other matter, the Provincial Government.] 26 Geo. V, c. 2.

CHAPTER I.

EMERGENCY POWERS.

Power to detain and question persons behaving suspiciously.

3. (1) Any ⁴[Servant of the Crown] authorised in this behalf by general or special order of the ⁵[Provincial Government] may require any person whom on reasonable grounds he suspects to be acting or about to act in a manner prejudicial to the public safety or peace to give an account of his identity and movements, and may arrest and detain him for a period not exceeding twenty-four hours for the purpose of obtaining and verifying his statements.

(2) An officer making an arrest under this section may in so doing use any means that may be necessary to effect the arrest.

Power to take possession of immovable property.

4. (1) If, in the opinion of the ⁶[Provincial Government], it is necessary to utilize any particular land or building for quarters or offices for public servants, or for the

¹These words and figures were inserted by s. 23 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²The word "and" was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937

³The word "and" and clause (d) were inserted, *ibid.*

⁴These words were substituted for the words "Officer of Government", *ibid.*

⁵See foot-note 3 on p. 43, *ante.*

[1932.]

(Chapter I.—Emergency Powers.—Secs. 5, 6.)

accommodation of troops or police or prisoners or persons in custody in places where public lands or buildings are not sufficient for the purpose, the ¹[Provincial Government] may, by order in writing, require the occupier or other person in charge of the land or building to place it at the ²[disposal of the Provincial Government] at such time as may be specified in the order, together with the whole or any part specified in the order of any fixtures, fittings, furniture or other things for the time being in the building; and the ¹[Provincial Government] may utilize such land, building, fixtures, fittings, furniture or other things in such manner as it may consider expedient :

Provided that reasonable notice and reasonable facilities for withdrawal shall be given to persons occupying any such building before possession is taken under this section :

Provided also that the land or building—

- (a) shall not be so utilized as to wound the religious feelings of the owner or of the persons who were in occupation when possession was taken ;
and
- (b) shall not, as far as practicable, be so utilized as to interfere with access to any place of worship situated in or contiguous to the land or building.

(2) In this section “building” includes any portion or portions of a building whether separately occupied or not, but does not include any structure set apart for public worship.

5. If, in the opinion of the District Magistrate, it is necessary to utilize any product, article or thing, or any class of product, article or thing, in furtherance of the purposes of this Act, the District Magistrate may, by order in writing, require any owner or person in charge of such product, article or thing to place it at the ²[disposal of the Provincial Government] at such time and place as may be specified in the order ; and the District Magistrate may utilize it in such manner as he may consider expedient.

Power to take possession of movable property.

6. The District Magistrate may, by order in writing, prohibit or limit, in such way as he may think expedient for the purposes of this Act, access to any building or place

Power to prohibit or limit access to certain places.

¹See foot-note 3 on p. 43, *ante*.

²These words were substituted for the words “disposal of Government” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Emergency Powers.—Secs. 7—10.)

in the possession or under the control ¹[of the Central or the Provincial Government] or of any railway administration or local authority, or to any building or place in the occupation, whether permanent or otherwise, of His Majesty's Naval, Military or Air forces or of any police force, or to any place in the vicinity of any such building or place.

Power to prohibit or regulate traffic.

7. The District Magistrate may, by order in writing, prohibit or regulate, in such way as he may think expedient for the purposes of this Act, traffic over any road, pathway, bridge, waterway or ferry.

Power to regulate means of transport.

8. (1) The District Magistrate may, by order in writing, require any person to make, in such form and within such time and to such authority as may be specified in the order, a return of any vehicles or means of transport owned by him or in his possession or under his control.

(2) The District Magistrate, if, in his opinion, it is expedient for the purposes of this Act, may, by order in writing, require any person owning or having in his possession or under his control any vehicle or means of transport to take such order therewith for such period as may be specified in the order.

Compensation.

9. The Collector shall, on the application of any person who has suffered loss by the exercise of the powers conferred by section 4 or section 5 or sub-section (2) of section 8, award to such person such reasonable compensation as he thinks proper.

Powers regarding arms, ammunition, etc.

10. (1) The District Magistrate may, by order in writing published in such manner as he thinks best adapted for informing the persons concerned,—

(a) prohibit or regulate the purchase, sale or delivery of, or other dealing in, any arms, parts of arms, ammunition or explosive substances; or

(b) direct that any person owning or having in his possession or under his control any arms, parts of arms, ammunition or explosive substances, shall keep the same in a secure place approved by the District Magistrate or remove them to any place specified in the order.

¹These words in sections 6 and 11 were substituted for the words "of Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter I.—Emergency Powers.—Secs. 11-11B.)

(2) The District Magistrate may take possession of—

- (a) any arms, ammunition or explosives, or
- (b) any tools, machinery, implements or other material of any kind, likely, in his opinion, to be utilized, whether by the owner or by any other person, for the commission of any scheduled offence,

and may make such orders as he may think fit for the custody and disposal thereof.

11. The District Magistrate may require any person residing in the district to assist in the restoration and maintenance of law and order and in the protection of property in the possession or under the control ¹[of the Central or the Provincial Government], or of any railway administration or local authority, in such manner and within such limits as the District Magistrate may specify :

Power to require the assistance of any person.

Provided that before passing any order under this section the District Magistrate shall satisfy himself that such order is not of a harassing or humiliating nature or incompatible with the ability or position in life of the person concerned:

Provided also that no female person shall be required to render any assistance.

²11A. (1) If the District Magistrate is of opinion that any place is being used for the purposes of an association which encourages or aids persons to commit acts of violence or intimidation he may, by order in writing, published in such manner as he thinks best adapted for informing the persons concerned, prohibit the use of such place for such purposes.

Power to prohibit use of places for purposes of certain associations.

(2) In this section and sections 11B and 11C “place” includes a house or building, or part thereof or a tent or vessel.

³11B. (1) If, in the opinion of the District Magistrate, any place is being used in contravention of an order published under section 11A, the District Magistrate or any officer authorised in this behalf in writing by the District Magistrate may take possession of such place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the ⁴[Provincial Government] :

Power to take possession of places used for purposes of certain associations.

Provided that where such place contains any apartment occupied by women or children reasonable time and facilities shall be afforded for their withdrawal :

¹See foot-note 1 on p. 46, *ante*.

²Sections 11A to 11C were inserted by s. 24 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

³See foot-note 3 on p. 43, *ante*.

(Chapter I.—Emergency Powers.—Secs. 11C, 12).

Provided also that if such place is regularly used for the purposes of worship or religious observances reasonable facilities shall be afforded for the continued use of such place for such purposes.

(2) The District Magistrate or officer taking possession of any place under sub-section (1) shall allow reasonable facilities for the removal of any movable property from the said place by any person who applies for, and, in the opinion of the District Magistrate or such officer, is entitled to possession of such property unless such property is liable to forfeiture or seizure under any law for the time being in force.

(3) Where possession of any place has been taken under sub-section (1), the District Magistrate, on the application of any person who has suffered loss thereby, shall, if such person, in the opinion of the District Magistrate, has not used such place for the purposes of, and has no connection with, any association of the nature described in sub-section (1) of section 11A, award to such persons, such reasonable compensation as the District Magistrate thinks proper.

(4) Where possession of any place has been taken under sub-section (1), the ¹[Provincial Government] may at any time direct that possession of such place shall be relinquished.

Penalty for entering or remaining upon a place of which possession is taken.

11C. Any person who enters or remains, without the permission of the District Magistrate or of an officer authorised by him in this behalf, upon a place of which possession is taken under section 11B shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Power to issue search-warrants.

12. The power to issue search-warrants conferred by section 98 of the Code shall be deemed to include a power to issue warrants authorising—

- (a) the search of any place in which any Magistrate mentioned in that section has reason to believe that any scheduled offence or any offence punishable under this Act has been, is being or is about to be committed or that preparation for the commission of any such offence is being made ;
- (b) the seizure in or on any place searched under clause (a) of anything which the officer executing the warrant has reason to believe is being used, or is intended to be used, for any purpose mentioned in that clause ;

¹See foot-note 3 on p. 48, ante.

²See foot-note 2 on p. 47,

[1932.]

(Chapter I.—Emergency Powers.—Secs. 13—15.)

and the provisions of the Code shall, so far as may be, apply to searches made under the authority of any warrant issued and to the disposal of any property seized, under this section.

13. Any authority on which any power is conferred by or under this chapter may authorise any person to enter and search any place the search of which such authority has reason to believe to be necessary for the purpose of—

General power of search.

- (a) ascertaining whether any order given, direction made, or condition prescribed in the exercise of such power has been duly complied with; or
- (b) generally, giving effect to such power or securing compliance with, or giving effect to, any order given, direction made or condition prescribed in the exercise of such power.

14. If any person disobeys or neglects to comply with an order made, direction given, or condition prescribed, in accordance with the provisions of this chapter, the authority which made the order, gave the direction or prescribed the condition may take or cause to be taken such action as it thinks necessary to give effect thereto but shall not in any case inflict more harm than is necessary for such purpose.

Power to give effect to orders if disobeyed.

15. (1) Where it appears to the ¹[Provincial Government] that the inhabitants of any area are concerned in the commission of scheduled offences or are in any way assisting persons in committing such offences, the ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], impose a collective fine on the inhabitants of that area.

Imposition of collective fine on inhabitants of turbulent areas.

(2) The ¹[Provincial Government] may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine :

Provided that such exemption shall not be based upon communal or racial considerations.

(3) The District Magistrate, after such inquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

¹See foot-note 3 on p. 43, *ante*.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Emergency Powers.—Secs. 16—18.)

(4) The portion of such fine payable by any person may be recovered from him as a fine ¹[or as a public demand] under the Bengal Public Demands Recovery Act, 1913.

Ben Act
III of
1913.

(5) The ²[Provincial Government] may award compensation out of the proceeds of a fine realised under this section to any person who, in the opinion of the ²[Provincial Government], has suffered injury to person or property by the unlawful act of the inhabitants of the area.

Penalty for
disobeying orders
under this
chapter.

16. Whoever disobeys or neglects to comply with any order made, direction given, or condition prescribed in accordance with the provisions of this chapter or impedes the lawful exercise of any power referred to in this chapter, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Delegation of
powers.

17. (1) The ²[Provincial Government] may invest the District Magistrate with the powers of a ²[Provincial Government] under section 4.

(2) The ²[Provincial Government] may invest any Sub-divisional Magistrate, or any police officer not below the rank of Deputy Superintendent or any military officer not below the rank of Captain, with any of the powers of a District Magistrate under this chapter except powers under ²[section 11A or] sub-section (3) of section 15.

(3) The District Magistrate may, by order in writing, authorise any civil or military officer to exercise in a specified area or in connection with a specified operation or series of operations any of the powers of the District Magistrate under this chapter or with which the District Magistrate has been invested under sub-section (1).

Power to make
rules.

18. (1) The ²[Provincial Government] * * *
may, by notification in the ⁵[*Official Gazette*], make rules—

- (a) to prevent communications with absconders and to secure information of the movements of absconders ;
- (b) to prevent attacks on the persons or property of His Majesty's subjects, or to secure information of such attacks and of designs to make such attacks ;

¹These words were substituted for the word "recoverable" by s. 2 of the Bengal Suppression of Terrorist Outrages (Amendment) Act, 1932 (Ben. Act XIX of 1932).

²See foot-note 3 on p. 43, *ante*.

³These words, figures and letter were inserted by s. 25 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

⁴The words "subject to the control of the Governor General in Council" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵See foot-note 2 on p. 49, *ante*.

[1932.]

(Chapter I.—Emergency Powers.—Secs. 19—22.)

- (c) to secure the safety of His Majesty's forces and police ;
- (d) to regulate the exercise of powers conferred by or under this chapter ;
- (e) to provide for the custody pending production before a Court of prisoners taken in circumstances in which the provisions of the Code cannot be followed without undue inconvenience ;
- (f) generally, to carry out the purposes of this chapter.

(2) In making a rule under this section the ¹[Provincial Government] may provide that any contravention thereof shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

19. Except as provided in this chapter, no proceeding or order purporting to be taken or made under this chapter shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under this chapter. Bar of jurisdiction.

20. Nothing contained in this chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under this chapter. Operation of other penal laws not barred.

21. Notwithstanding anything contained in the Code, any offence punishable under this chapter shall be cognizable and non-bailable. Offences under this chapter to be cognizable and non-bailable.

22. (1) Notwithstanding anything contained in the Code, an offence punishable under section 160, 186, 187, 188, 189, 227, 228, 505, 506, 507 or 508 of the Indian Penal Code, or under section 17 of the Indian Criminal Law Amendment Act, 1908, shall be cognizable and non-bailable. Certain other offences to be cognizable and non-bailable.

Act XLV,
of 1860.
XIV of
1908.

(2) Notwithstanding anything contained in section 195 or section 196 of the Code, any Court otherwise competent to take cognizance of an offence punishable under section 186, 187, 188, 228 or 505 of the Indian Penal Code may take cognizance of such offence upon a police-report being made to it under clause (a) of sub-section (1) of section 173 of the Code, but shall not proceed with the trial unless it has received

¹See foot-note 3 on p. 43, *ante*.

²Section 19 shall have effect as if it had been enacted by the Indian Legislature—see section 4 of the Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932 (XXIV of 1932).

The Bengal Suppression of Terrorist Outrages Act, 1932.

[Ben. Act XII]

(Chapter I.—Emergency Powers.—Chapter II.—Special Magistrates.—Secs. 23—25.)

a complaint in respect of such offence under section 195 or section 196 as the case may be, and the absence of such complaint shall be reasonable cause, within the meaning of section 344 of the Code, for postponing the commencement of the trial and for remanding the accused.

**District
Magistrate in
Calcutta.**

23. If this chapter is extended to the Presidency town of Calcutta, "District Magistrate" shall, for the purposes of this chapter, mean, in that town, the Commissioner of Police.

CHAPTER II.

SPECIAL MAGISTRATES.

**Special
Magistrate.**

24. Any Presidency Magistrate or Magistrate of the first class who has exercised powers as such for a period of not less than four years may be invested by the ¹[appropriate Government] with the powers of a Special Magistrate under this Act.

**Jurisdiction of
Special
Magistrates.**

25. ¹[(1)] Where, in the opinion of the ¹[appropriate Government], or of the District Magistrate if empowered by the ¹[appropriate Government] in this behalf, there are reasonable grounds for believing that any person has committed a scheduled offence not punishable with death in furtherance of or in connection with the terrorist movement, or an offence punishable under this Act, ²[or under section 6 of the Bengal Criminal Law Amendment Act, 1930] the ¹[appropriate Government] or District Magistrate, as the case may be, may, by order in writing, direct that such person shall be tried by a Special Magistrate.

**Ben. Act
VI of
1930.**

¹(2) Where, in the opinion of the ¹[appropriate Government], there are reasonable grounds for believing that any person has committed, or attempted or conspired to commit, or abetted the commitment of, any offence under the Indian Arms Act, 1878, for the purpose of making, or assisting any person to make, unlawful gain by trafficking in arms or ammunition without a license under the said Act, the ¹[appropriate Government] may, by order in writing, direct that such person shall be tried by a Special Magistrate.

**Act XI of
1878.**

¹These words were substituted for the words "Local Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 25 was renumbered as sub-section (1) of section 25 and to this section as so renumbered sub-section (2) was added by s. 7 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

³These words were inserted by s. 36 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

[1932.]

(Chapter II.—Special Magistrates.—Secs. 26—31.)

26. (1) In the trial of any case under this Act, a Special Magistrate shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates: Procedure of Special Magistrates.

Provided that the Special Magistrate shall not be bound to adjourn any trial for any purpose unless such adjournment is, in his opinion, necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this chapter, shall apply to the proceedings of a Special Magistrate; and for the purposes of the said provisions the Special Magistrate shall be deemed to be a Magistrate of the first class.

27. A Special Magistrate may pass any sentence authorised by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years. Sentences by Special Magistrates.

28. (1) Where a Special Magistrate in any district passes a sentence of transportation for a term not exceeding two years or of imprisonment for a term not exceeding four years, or of fine, an appeal shall lie to the Court of Session. Appeals.

(2) An appeal under sub-section (1) shall be presented within thirty days from the date of the sentence.

29. No direction shall be made under section 25 for the trial of any person by a Special Magistrate, for an offence for which he was being tried at the commencement of this Act before any Court but, save as aforesaid, a direction under the said section may be made in respect of any person accused of a scheduled offence ¹[or of an offence referred to in sub-section (2) of section 25], whether such offence was committed before or after the commencement of this Act. Retrospective effect of directions under section 25.

Page 53—

In section 30, for the words 'or of an offence', substitute the words 'or an offence'. convict

(Substituted by Bengal Act XVI of 1946, section 2 and the First Schedule.)

[No. 41, dated the 22nd July, 1947.] and, subject to the provision of section 27, pass any sentence authorised by law for the punishment thereof.

31. A Special Magistrate may, if he thinks fit, order at any stage of a trial that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Special Magistrate as a Court: Power to exclude persons or public from precincts of Court.

¹These words were inserted by s. 8 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

²Sic Omit "of"

(Chapter II.—*Special Magistrates.*—Secs. 32—34.)

Provided that where in any case the Public Prosecutor or Advocate-General, as the case may be, certifies in writing to the Special Magistrate that it is expedient in the interests of the public peace or safety or of the peace or safety of any of the witnesses in the trial that the public generally should not have access to, or be or remain in, the room or building used by the Special Magistrate as a Court, the Special Magistrate shall order accordingly.

Powers of
Special
Magistrates to
deal with
refractory
accused.

32. (1) Where any accused, in a trial before a Special Magistrate, has, by his voluntary act, rendered himself incapable of appearing before the Magistrate, or resists his production before the Magistrate, or behaves before the Magistrate in a persistently disorderly manner, the Magistrate may, at any stage of the trial, by order in writing made after such inquiry as he may think fit, dispense with the attendance of such accused for such period as he may think fit, and proceed with the trial in the absence of the accused.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears before the Magistrate and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial before a Special Magistrate shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

Special rule of
evidence.

33. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Special Magistrate if such person is dead or cannot be found or is incapable of giving evidence and the Special Magistrate is of opinion that such death, disappearance or incapacity has been caused in the interests of the accused. I of 1872

Application of
ordinary law.

34. The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this chapter, shall apply to all matters connected with, arising from or consequent upon a trial by Special Magistrates.

4

(Chapter III.—Possession of certain literature.
Secs. 35, 36.)

CHAPTER III.

POSSESSION OF CERTAIN LITERATURE.

35. Whoever knowingly has in his possession any newspaper, book or other document— Penalty for possession of certain prohibited documents.

VIII of
1878.

- (a) the importation of which has been prohibited under the Sea Customs Act, 1878, or
- (b) copies whereof have been declared to be forfeited to His Majesty under any law for the time being in force,

shall be punishable with imprisonment, which may extend to three years or with fine, or with both.

36. Whoever has in his possession any newspaper, book or other document which contains any words, signs or visible representations which— Penalty for possession of documents inciting to or encouraging the commission of certain offences.

XI of
1878.

- (a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder, robbery, dacoity or criminal intimidation, or any offence punishable under the Indian Arms Act, 1878, the Explosive Substances Act, 1908, or under sections 121, 121A, 122, 124, 326, 329, 332, 386, 399, 400, 402, 435, 436 or 440 of the Indian Penal Code; or

VI of
1908.

Act XLV
of 1860.

- (b) directly or indirectly express approval or admiration of any such offence in a manner likely to encourage the commission of the offence,

shall, unless he proves that he had such newspaper, book or document in his possession—

- (i) in circumstances indicating that he did not intend that it should, and did not know that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement; or
- (ii) for the purposes of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement,

be punishable with imprisonment which may extend to three years or with fine, or with both.

¹Chapter III (sections 35 to 39) was inserted by s. 27 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

[Ben. Act XII

*(Chapter III.—Possession of certain literature.—
Secs. 37—39.)*

Meaning of
"book",
"document"
and "news-
paper."

Cognizance of
offences under
sections 35
and 36.

¹37. In sections 35 and 36, "book", "document" and "newspaper" have the same meaning as in clauses (1), (2) and (5) respectively of section 2 of the Indian Press Emergency Powers Act, 1931.

XXIII of
1931.

¹38. (1) No Court shall take cognizance of an offence punishable under section 35 or section 36 except upon complaint made by order of, or under authority from, the ²[appropriate Government] or a District Magistrate empowered by the ²[appropriate Government] in this behalf.

(2) No complaint shall be made under sub-section (1) unless the ²[appropriate Government] or the District Magistrate, as the case may be—

(a) is satisfied that the newspaper, book or document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement ; and

(b) is of opinion that the person alleged to have committed the offence—

(i) intended that the newspaper, book or document should, or knew that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement ; or

(ii) is a person to whom the provisions of sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, are applicable.

Ben. Act
VI of
1930.

Offences under
section 35 or
section 36 to be
cognizable
and bailable.

¹39. Notwithstanding anything contained in the Code, an offence punishable under section 35 or section 36 shall be cognizable and bailable.

¹See foot-note 1 on p. 55, *ante*.

²See foot-note 1 on p. 52, *ante*.

The Bengal Suppression of Terrorist Outrages Act, 1932. 57
(The Schedule.)

of 1932.]

THE SCHEDULE.

[See section 2(c).]

- (a) Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 121, 121A, 122, 123, 148, 212, 216, 216A, 302, 304, 307, 324, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460 and 506; **Act XLV of 1860.**
- (b) any offence under the Explosive Substances Act, VI of 1908. 1908;
- (c) any offence under the Indian Arms Act, 1878; **XI of 1878.**
- (d) any attempt or conspiracy to commit, or any abetment of, any of the above offences.

Bengal Act XIII of 1932

Page 59—

Strike out Bengal Act XIII of 1932, and *insert* the following note, namely:—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

An Act to amend the Bengal Motor Vehicles Tax Act, 1932.

Ben. Act I
of 1932.

WHEREAS it is expedient to amend the Bengal Motor Vehicles Tax Act, 1932, in the manner hereinafter appearing;

5 & 6 Geo.
V, c. 61; 6
& 7 Geo. V,
c. 37; 9 &
10 Geo. V,
c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Motor Vehicles Tax (Amendment) Act, 1932. Short title and commencement.

(2) It shall come into force on the first day of January, 1933.

2. Nothing in this Act shall affect any tax paid before the commencement of this Act. Saving of taxes paid.

3 to 11. [Amendments incorporated in Ben. Act I of 1932.]

¹For Statement of Objects and Reasons, *see Calcutta Gazette*, 1932, Pt. IV, page 384; and for report of the Select Committee, *see ibid*, p. 426; and for Proceedings in Council, *see the Proceedings of the Bengal Legislative Council*, Vol. XXXIX, No. 4, p. 37 and Vol. XXXIX, No. 5, p. 39 and Vol. XXXIX, No. 6, p. 184.

Bengal Act XV of 1932

(THE BENGAL MUNICIPAL ACT, 1932.)

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[Ben. Act XV

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507. Publication of rules, by-laws, orders and notices.

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- 532. Power of Commissioners to direct prosecution for public nuisance, etc.
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Bengal Act XV of 1932

(THE BENGAL MUNICIPAL ACT, 1932.)¹

(1st December 1932.)

An Act to consolidate and amend the law relating to municipalities in Bengal.

WHEREAS it is expedient to consolidate and amend the law relating to municipalities in Bengal ;

5 & 6, Geo.
v, c. 61 ; 6
& 7 Geo. v,
c. 37 ; 9 &
10, Geo. v,
c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

Part I.

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Bengal Municipal Act, 1932.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal, except Calcutta as defined by clause (11) of section 3 of the Calcutta Municipal Act, 1923.

Ben Act
III of
1923.

(3) It shall come into force on such date ²as the ³[Provincial Government] may, by notification, appoint.

(4) Notwithstanding anything contained in sub-section (2), it shall not take effect in any cantonment or part of a cantonment without the consent of the ⁴[Central Government] previously obtained.

¹For Statement of Objects and Reasons, see *Calcutta Gazette, Extraordinary* of the 18th March, 1932, and for Proceedings in Council, see Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 3, pages 844-861 and Vol. XXXIX, No. 2, pages 177-194, 208-253 and 274-309 ; and Vol. XXXIX, No. 3, pages 30-72, 93-129, 141-189, 204-249, 280-324 ; and Vol. XXXIX, No. 4, pages 48-85, 94-116, 190-234, 255-316 ; and Vol. XXXIX, No. 5, pages 39-96, 120-176, 195-254, and Vol. XXXIX, No. 6, pages 113-147.

²The Act came into force on the 1st December 1932, vide notification No. 5716M., dated the 28th November, 1932, published in the *Calcutta Gazette* of the 1st December 1932, Pt. I, p. 1942.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Governor General in Council", *ibid.*

(Chapter I.—Preliminary.—Secs. 2, 3.)

(5) Those provisions of this Act which are solely applicable to any part of the Darjeeling district shall come into operation only on such date and subject to such exceptions and modifications as the [Provincial Government] may, by notification¹, direct.

Repeals, savings and amendments.

2. * * *

All municipalities constituted, ****limits defined, regulations, measurements and divisions made, licenses and notices issued, taxes, tolls, rates and fees imposed or assessed, budgets passed, assessments made, plans approved, permissions or sanctions granted under the Bengal Municipal Act, 1884, shall, so far as they are in force at the commencement of this Act, be deemed to have been respectively constituted, ** defined, issued, imposed, assessed, passed, made, approved or granted under this Act, and shall (unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act) remain in force for the period (if any) for which they were so constituted, ** defined, issued, imposed, assessed, passed, made, approved or granted.

Ben. Act
III of
1884.

* * * * *

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

“Bridge.”

(1) “bridge” includes a culvert;

“Building.”

(2) “building” includes a house, out-house, stable, privy, urinal, shed, hut, wall (other than a boundary wall, not exceeding ten feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, but does not include a *hogla* or other similar kind of temporary shed erected on ceremonial or festive occasions;

“Building-line.”

(3) “building line” means the line up to which the main wall of a building abutting on a street or a projected public street may lawfully extend;

“Bustee.”

(4) “bustee” means an area containing land occupied by, or for the purposes of, any collection of huts;

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To footnote 2 add the following:—
“as amended by notification No. 2631 E.A., dated the 8th February, 1937, published in the Calcutta Gazette of 1937, Part I, page 294. See also notifications Nos. 343 M., dated the 4th March, 1939, published in the Calcutta Gazette of 1939, Part I, page 499 and 543 M., dated the 2nd March, 1942, published in the Calcutta Gazette of 1942, Part I, page 580, and, for the Kurrong Municipality, notification No. 542 M., dated the 4th March, 1939, published in the Calcutta Gazette of 1939, Part I, page 501.”
[No. 36, dated the 28th April, 1943.]

In section 3—

- (a) In clause (5), after the word "jinrickshaw" insert the words "and a cycle-rickshaw"; and "marriage."
- (b) to clause (14) add the words, figures, brackets and letters "but does not include a drug within the meaning of clause (b) of section 3 of the Drugs Act, 1940;"

(Inserted and added by West Bengal Act XXVIII of 1951, Section 2.)

[No. 48, dated the 1st April, 1952.]

vehicle designed for the conveyance of small children ;

(7) "connected-privy" means a privy which is directly connected with a sewer ; "Connected-privy."

(8) "conservancy" means the removal and disposal of sewage, offensive matter and rubbish ; "Conservancy."

(9) the expression "cubical extent", when used with reference to the measurement of a building, means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest or only storey ; "Cubical extent."

(10) "dairy" includes any farm, cattle-shed, cow-house, milk-store, milk-shop, or other place from which milk is supplied only on, or for, sale or, in, which milk is kept, or used for the purposes of sale, or manufacture into butter, ghee, cheese, curds, or dried or condensed milk, for sale. "Dairy."

and in the case of a dairyman or person selling milk, who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop, or a shop, or other place in which milk is sold for consumption on the premises only or a shop or place from which milk is sold or supplied in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shop or place ;

(11) "dangerous disease" means—

(a) cholera, plague, small-pox, cerebro-spinal meningitis and diphtheria ; and "Dangerous disease."

(b) any other disease which the ¹[Provincial Government] may, by notification, declare to be a dangerous disease for all or any of the purposes of this Act ;

(12) "District Magistrate" means the chief magistrate in a district ; "District Magistrate."

¹See foot-note 3 on p. 85, ante.

(Chapter I.—Preliminary.—Sec. 3.)

- "Drain."** (13) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying off sullage, sewage, offensive matter, polluted water, rainwater or sub-soil water ;
- "Drug."** (14) "drug" means any substance used as medicine or in the composition or preparation of medicines, whether for internal or external use ;
- "Dwelling house."** (15) "dwelling house" means a masonry or framed building constructed, used or adapted to be used wholly or principally for human habitation ;
- "Food."** (16) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes confectionery, flavouring and colouring matters and spices and condiments ;
- "Framed building."** (17) "framed building" means a building the external walls of which are constructed of timber framing or iron framing, and the stability of which depends on such framing ;
- "Habitable room."** (18) "habitable room" means a room constructed or adapted for human habitation ;
- "Health Officer."** (19) "Health Officer" includes a Medical Officer of Health ;
- "Hill municipality."** (20) "hill municipality" means the Darjeeling Municipality and any other municipality, wholly or in part situated in a hilly tract, which the ¹[Provincial Government] may, by notification, declare to be a hill municipality ;
- "Holding."** (21) "holding" means land held under one title or agreement and surrounded by one set of boundaries :

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act.

Explanation.—Holdings separated by a street or other means of communication shall be deemed to be adjoining within the meaning of this proviso ;

- "House."** (22) "house" includes any hut, shop or ware-house ;
- "House-gully."** (23) "house-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cesspool or other receptacle for filthy or polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air space above such passage or land ;

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter I.—Preliminary.—Sec. 3.)

(24) "hut" means any building which is constructed principally of wood, bamboo, mud, leaves, grass or thatch, and includes any temporary structure of whatever size or any small building (not being a masonry building) of whatever material made ; "Hut."

(25) "inhabitant" used with reference to any local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein ; "Inhabitant."

(26) "inhabited room" means a room in which some person passes the night, or which is used as a living room, and includes a room with respect to which there is a reasonable presumption (until the contrary is shown) that some person passes the night therein or that it is used as a living room ; "Inhabited room."

(27) "land" includes benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ; "Land."

(28) "living thing" includes any animal, bird or fish ; "Living thing."

(29) "lodging-house" means a house in which pilgrims or other persons are harboured or lodged for hire for a single night or for some other short period and where there is ordinarily community of eating or sleeping accommodation ; "Lodging-house."

(30) "market" includes any place where persons assemble for the sale of any living thing intended for human food or of any article of food ; "Market."

(31) "masonry building" means any building other than a framed building or a hut and includes any structure a substantial part of which is made of masonry or of steel, iron or other metal ; "Masonry building."

(32) "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled or which may be propelled, on a road by electrical or mechanical power either entirely or partially ; "Motor vehicle."

(33) "municipal drain" means a drain vested in the Commissioners ; "Municipal drain."

(34) "municipality" means any place in which this Act, or any part thereof, is in force ; "Municipality."

(35) "notification" means a notification published in the ¹[*Official Gazette*] ; "Notification."

(36) "occupier" means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the "Occupier."

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Preliminary.—Sec. 3.)

word is used or damages on account of the occupation of such land or building, and includes an owner living in, or otherwise using, his own land or building and also a rent-free tenant ;

"Offensive matter."

(37) "offensive matter" means kitchen or stable refuse, dung, dirt, putrid or putrifying substances and filth of any kind which is not included in sewage as defined in this section ;

"Owner."

(38) "owner" includes the person for the time being receiving the rent of any land or building or of any part of any land or building whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, or who would so receive such rent if the land, building or part thereof were let to a tenant ;

"Plinth."

(39) "plinth" means the part of a wall or structure between the ground-level and the level of the lowest floor of a building ;

"Premises."

(40) "premises" includes lands, buildings, vehicles, tents, vans, structures of any kind, streams, lakes, sea-shore, drains, ditches or places open, covered, or enclosed, whether built on or not, and whether public or private, and whether natural or artificial, and whether maintained or not under statutory authority, and any vessel lying in any river, harbour or other water not being a port declared under the Indian Ports Act, 1908 ;

XV of
1908.

"Prescribed."

(41) "prescribed" means prescribed by this Act or by rules or by-laws made thereunder ;

"Private drain."

(42) "private drain" means any drain which is not a municipal drain as defined in this section ;

"Private street."

(43) "private street" means any street, road, lane, gully, alley, passage or square which is not a public street as defined in this section, but does not include a passage securing access to less than four premises, or a passage provided in effecting the partition of any masonry building amongst joint owners, where such passage is not less than eight feet wide ;

"Public"

(44) "public street" means any street, road, lane, gully, alley, passage, pathway, square or court whether a thoroughfare or not, over which the public have a right of way, and includes—

- (a) the access or approach to a public ferry,
- (b) the roadway over any public bridge or causeway,
- (c) the footway attached to any such street, public bridge or causeway,
- (d) the passage connecting two public streets, and

of 1932.]

(Chapter I.—Preliminary.—Sec. 3.)

(e) the drains attached to any such street, public bridge or causeway, and, where there is no drain attached to any such street, shall be deemed to include also, unless the contrary is shown, all land up to the boundary wall, *ail*, hedge or pillar of the premises, if any, abutting on the street, or if a street alignment has been fixed, then up to such alignment;

Ben. Act. VI of 1914. (45) "registered medical practitioner" means a medical practitioner registered under the Bengal Medical Act, 1914. "Registered medical practitioner."

(46) "rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not offensive matter or sewage as defined in this section; "Rubbish."

(47) "school" includes a *maktab*, a *madrasah* and a *tol*; "School."

(48) "service-privy" means a fixed privy which is cleansed by hand, but does not include a movable commode; "Service-privy."

(49) "sewage" means night-soil and other contents of privies, urinals, cesspools or drains, and includes trade effluents and discharges from manufactories of all kinds; "Sewage."

(50) "slaughter-house" means any place used for the slaughter of cattle, sheep, goats, kids or pigs for the purpose of selling the flesh thereof as meat; "Slaughter-house."

(51) "street" means a public or private street; "Street"

(52) "street alignment" means the line dividing the land comprised in and forming part of a street from the adjoining land; "Street alignment."

(53) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act; "The Commissioners."

(54) "[Magistrate]" includes the District Magistrate, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate of the first class subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act; "Magistrate."

(55) "watercourse" includes any river, stream, or channel, whether natural or artificial; "Watercourse."

(56) "water for domestic purposes" shall not be deemed to include a supply— "Water for domestic purposes."

(a) for animals or for washing carriages, where such animals or carriages are kept for sale or hire,

(b) for any trade, manufacture or business,

¹This word was substituted for the words "the Magistrate" by s. 2 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

[Ben. Act XV]

(Chapter I.—Preliminary.—Chapter II.—The Municipalities.—Secs. 4—6.)

- (c) for fountains,
- (d) for watering gardens or streets,
- (e) for any ornamental or mechanical purpose,
- (f) for building purposes, or
- (g) for flushing purposes, except a supply allowed for flushing connected-prives in accordance with a resolution of the Commissioners ;

“Water-works.”

(57) “water-works” includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, cuts, sluices, mains, pipes, culverts, engines, hydrants, stand-pipes, conduits, and all machinery, lands, buildings, bridges, and things for supplying or used for supplying water ;

“Year.”

(58) “year” means a year beginning on the first day of April.

Extent of power conferred on an authority.

4. (1) Where a power is expressed as being conferred on any authority to require a person to do one thing or do another thing, that authority may, in its discretion, require the person to do either thing or, if the nature of the case permits, both of the things, or may give the person the option of doing whichever of the things he chooses.

(2) Where the power is expressed as being conferred on any authority to require a person to do a number of things, that authority may from time to time in its discretion require that person to do any one or more of those things.

Power to define character of building.

5. The Commissioners at a meeting may decide whether any particular building is a masonry building, a framed building, or a hut, or is a lodging-house, as defined in section 3, and their decision shall be final.

Part II.

CHAPTER II.

The Municipalities.

The creation of municipalities.

Declaration of intention to constitute, abolish or alter limits of municipality.

6. (1) The ¹[Provincial Government] may, by notification, and by such other means as it may determine, declare its intention—

- (a) to constitute any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of any such town a municipality under this Act ; or

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter II.—The Municipalities.—Sec. 6.)

- (b) to withdraw any municipality from the operation of this Act ; or
- (c) to exclude from a municipality any local area comprised therein and defined in the notification ; or
- (d) to include within a municipality any local area contiguous to the same and defined in the notification ; or
- (e) to divide any municipality into two or more municipalities ; or
- (f) to unite two or more municipalities so as to form one municipality ; or
- (g) to define the limits of any municipality ; or
- (h) to revise the boundaries of two or more contiguous municipalities ; or
- (i) to alter the number of Commissioners of a municipality in consideration *inter alia* of the increase or decrease in the population, income, number of voters and commercial and general importance of the place :

Provided that a declaration shall not be made—

- (i) under clause (a), unless the ¹[Provincial Government] is satisfied that three-fourths of the adult male population of the town to which it refers are chiefly employed in pursuits other than agriculture, and that such town contains not less than three thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town ;
- (ii) under clause (b) and clauses (d) to (g), in the case of any municipality in which the conditions specified in proviso (i) are complied with, except on the recommendation of the Commissioners of the municipality or each of the municipalities concerned at a meeting ;
- (iii) where any local area is to be excluded from a municipality under clause (c) of which area three-fourths of the adult male population are chiefly employed in pursuits other than agriculture and in which area the average number of inhabitants is not less than one thousand to the square mile, except after consideration of the views of the Commissioners at a meeting ;

¹See foot-note 3 on p. 85, *ante*.

(Chapter II.—The Municipalities.—Secs. 7, 8.)

- (iv) under clause (d), unless the ¹[Provincial Government] is satisfied that three-fourths of the adult male population of the local area to which it refers are chiefly employed in pursuits other than agriculture;
- (v) under clause (h), except after consideration of the views of the Commissioners of each of the municipalities concerned at a meeting;
- (vi) where any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment, **.

* (2) A copy, both in English and in Bengali, of every notification issued under sub-section (1) shall be posted

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Put an asterisk against sub-section (2) of section 6 and insert the following footnote after footnote 2, namely:—

*In the application of this Act to the district of Darjeeling, in sub-section (2) of section 6 for the words "both in English and in Bengali," substitute the words "in English, Bengali and such other languages as the Provincial Government may by notification prescribe."

(Substituted by paragraph 1 of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

consideration.

Constitution,
abolition or
alteration of
limits of a
municipality.

8. When three months from the date of the publication of the notification have expired, and after considering any objections which may be submitted, the ¹[Provincial Government] may by notification—

- (a) constitute the town or any specified part thereof a municipality under this Act; or
- (b) withdraw the whole area comprised in the municipality from the operation of this Act; or
- (c) include the local area or any part thereof in the municipality or exclude it therefrom; or

¹See foot-note 3 on p. 85, ante.

²The words "without the consent of the Governor General in Council previously obtained" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter II.—The Municipalities.—Secs. 9—12.)

- (d) divide the municipality into two or more municipalities or unite the municipalities, as the case may be ; or
- (e) define the limits of any municipality ; or
- (f) revise the boundaries of two or more contiguous municipalities ; or
- (g) alter the number of Commissioners of a municipality in consideration *inter alia* of the increase or decrease in the population, income, number of voters and commercial and general importance of the place.

9. Where a dwelling-house, manufactory, ware-house, place of trade or business is situated within the limits of two or more adjacent municipalities the ¹[Provincial Government] may, notwithstanding anything contained in this Act, by notification, declare within which of these municipalities such dwelling-house, manufactory, ware-house, place of trade or business shall be deemed to be included for the purposes of this Act.

Power to include certain dwelling-house, manufactory, etc., within a particular municipality.

10. When any local area is included in a municipality by a notification under clause (c) or clause (f) of section 8 all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area unless the ¹[Provincial Government] in and by the notification otherwise directs.

Application of Act and subsidiary orders in areas included within a municipality.

11. When any municipality is divided into two or more municipalities by a notification under clause (d) of section 8 then, notwithstanding anything contained in this Act, all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such division were in force in any part of the original municipality, shall be deemed to be in force in the same part of the municipalities formed by the division, unless the ¹[Provincial Government] in and by the notification otherwise directs.

Continuance of Act and subsidiary orders in municipalities formed by division.

12. When the whole area comprised in a municipality is withdrawn from the operation of this Act, or when any part of such area is excluded from the municipality, by a notification under clauses (b), (c) or (f) of section 8, this Act, and all rules and by-laws made, orders, directions and notices issued and powers conferred thereunder shall cease to apply to such area or part, as the case may be.

Discontinuance of Act and subsidiary orders in municipalities withdrawn from Act, or in excluded.

¹See foot-note 3 on p. 85, ante.

*(Chapter II.—The Municipalities.—Chapter III.—The
Municipal Authorities.—Secs. 13—15.)*

Power to except
municipality from
provisions of Act
unsuited thereto.

13. (1) If the circumstances of any municipality are such that, in the opinion of the ¹[Provincial Government] any of the provisions of this Act are unsuited thereto, the ¹[Provincial Government] may, on the recommendation of the Commissioners at a meeting, by notification, except the municipality or any part of it from the operation of those provisions; and thereupon the said provisions shall not apply to the municipality until applied thereto by notification.

(2) While such exception as aforesaid remains in force, the ¹[Provincial Government] may make rules consistent with the provisions of this Act in respect of matters excepted from the operation of the said provisions.

Commissioners
to erect and
maintain bound-
ary-marks.

14. The Commissioners of every municipality already existing, and of every municipality newly constituted under this Act and of every municipality whose local limits are altered as aforesaid, shall cause to be erected and set up and thereafter maintain, substantial boundary-marks defining the limits or the altered limits of the area subject to their authority, as set out in any notification published under this chapter.

Part III.

CHAPTER III.

The Municipal Authorities.

The constitution of the municipality.

Constitution
and incorporation
of municipality
and number of
Commissioners.

15. (1) There shall be established for each municipality a body of Commissioners having authority over the municipality and consisting of such number of Commissioners, not being more than thirty nor less than nine, as the ¹[Provincial Government] may specify in the notification constituting the municipality.

(2) Such Commissioners shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the municipality is known, having perpetual succession and a common seal, and by that name shall sue and be sued.

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

Page 97—

In section 16—

(a) for the words "Three-fourths of the total number of Commissioners shall be elected in the manner prescribed; the remaining one-fourth shall be appointed by the Provincial Government" *substitution of elected and appointed Commissioners.*

Page 97—

In the proviso to section 16—

(a) to clause (2) add the words "and the State Government may appoint persons, who have been resident within the limits of the municipality for at least twelve months immediately preceding the appointment and who are not subject to any of the disqualifications mentioned in section 22, and whom it thinks fit, to be Commissioners, notwithstanding anything contained in section 16A."; and

(b) omit clause (3).

(Added and omitted by West Bengal Act XXVIII of 1951, section 3.)

[No. 48, dated the 1st April, 1952.]

Volume V.

Page 97—

In section 16, after the existing proviso, add the following proviso, namely:—

"Provided further that the State Government may, by notification from time to time, extend the period referred to in the foregoing proviso by a further period or periods not exceeding two years in the aggregate beyond the period of two years referred to in that proviso, if in special circumstances (to be specified in the notification) the State Government thinks fit so to do."

(Added by West Ben. Act XXV of 1953, section 2.)

[No. 52, dated the 10th February, 1954.]

16, the ¹[Provincial Government], by notification, stating the special circumstances, may, in the case of a municipality the development of which in its opinion is due to an appreciable

in regard to industrial areas.

¹See foot-note 3 on p. 85, ante.

²These words were substituted for the words "one year" by s. 3(i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³These words were substituted for the words "unless he is qualified for election as a Commissioner" by s. 3(ii) of the Bengal Municipal

Page 97—

Put an asterisk against section 18 and insert the following footnote after footnote 3, namely:—

*In the application of the Act to the district of Darjeeling, omit section 18.

(Omitted by paragraph II of notification No. 3435E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

(Chapter III.—The Municipal Authorities.—Sec. 18.)

extent to and dependent on the concentration of any industry or industries (including railways and shipping and industries connected therewith)—

- ¹(i) increase the number of Commissioners to be appointed by the ²[Provincial Government] beyond the proportion mentioned in that section in order to secure the proper representation of such industry or industries and of labour employed therein :

Provided that the number of Commissioners to be appointed by the ²[Provincial Government] shall in no case exceed one-half of the total number of the Commissioners of the municipality ; or

- ¹(ii) (a) constitute industrial constituencies for the representation of such industry or industries and of labour employed therein on such basis as may appear to the ²[Provincial Government] to be expedient if it considers that such industry or industries and labour should be represented by elected Commissioners, and

- (b) provide for the representation of the inhabitants who are not directly

Page 98—

In section 18,—

- (a) in sub-section (1), omit clause (i) including the proviso;

- (b) for sub-section (2) substitute the following, namely:—

“(2) In any municipality where any industrial constituency is constituted in the manner mentioned in sub-clause (a) of clause (ii) of sub-section (1), the election of the Commissioners from such constituency shall be made from persons directly concerned or connected with such industry, or industries and the labour employed therein.”

(Omitted and substituted by West Bengal Act XI of 1947, section 4.)

[No. 43, dated the 5th June, 1949.]

When the provisions of sub-section (1) are applied the electoral roll shall be prepared and the elections held in such manner as the ²[Provincial Government] may prescribe.

¹Clauses (i) and (ii) were substituted for the original clauses (i) and (ii) by s. 4 (a) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 3 on p. 85, ante.

³Sub-section (2) was substituted for the original sub-section (2) by s. 4(b) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

III —The Municipal Authorities.—Secs. 19—21.)

entation
city
dition.

“19. (1) The State Government, if it considers necessary may, by order published in the Official Gazette, reserve for members of the Scheduled Tribes a number of seats among the seats to which the Commissioners of a municipality are to be elected.

***This section came into force with retrospective effect.**

21. (1) A Committee consisting of the Chairman and two Commissioners to be appointed by the Commissioners at a meeting for this purpose shall prepare and publish at the time and in the manner prescribed an electoral roll showing the names of persons qualified to vote. The electoral roll.

(3) When a municipality has been divided into wards the electoral roll shall be divided into separate lists for each ward.

(4) The electoral roll as published shall remain in force till the publication of a fresh electoral roll.

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¹ See foot-note 3 on p. 85. *ante.*

Put an asterisk against section 19 and insert the following footnote after footnote 1, namely:—

*In the application of the Act to the district of Darjeeling, omit section 19.

(Omitted by paragraph II of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

(Chapter III.—The Municipal Authorities.—Sec. 22.)

General dis-
qualifications
for being a
Commissioner.

22. (1) A person shall not be eligible for election or appointment as a Commissioner if such person—

- (a) has been adjudged by a competent court to be of unsound mind ; or
- (b) is under twenty-one years of age ; or
- (c) is an undischarged insolvent ; or
- (d) being a discharged insolvent, has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part ; or

Page 100—

In sub-section (1) of section 22, after clause (f), insert the following clause, namely:—

“or

- (g) is in arrears for more than three months in payment of any rate or tax:”.

(Inserted by West Bengal Act XXVIII of 1951, section 5.)

[No. 48, dated the 1st April, 1952.]

under by reason only of his having a share or interest in—

- (i) any lease, sale or purchase of land or any agreement for the same ; or
- (ii) any agreement for the loan of money or any security for the payment of money only ; or
- (iii) any newspaper in which any advertisement relating to the affairs of the Commissioners is inserted ; or
- (iv) any incorporated company which contracts with or is employed by the Commissioners.

(2) If any person is or has been convicted by a criminal court of any such offence as in the opinion of the ¹[Provincial Government] involves moral turpitude and which carries with it a sentence of transportation or imprisonment for a period of more than six months such person shall not, unless the offence of which he was convicted has been pardoned, be eligible for election or appointment for five years from the date of expiration of the sentence :

Provided that, on application made by a person disqualified under this sub-section, the ¹[Provincial Government] may remove the disqualification by an order made in this behalf.

¹See foot-note 3 on p. 85, ante.

(Chapter III.—The Municipal Authorities.—Sec. 23.)

23. (1) No person shall be qualified to be elected a Commissioner of a municipality, who is not entitled to vote at an election of Commissioners of such municipality. Qualifications of Commissioners and voters.

Page 101—

In clause (ii) of sub-section (2) of section 23 for the words "subject or the subject of an Acceding State" substitute the words "citizen of India".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

"[(iii) has, for a period or not less than twelve months immediately preceding such election, been resident within the limits of the municipality, or has for the said period immediately preceding such election been in occupation of a holding² and carrying on any trade or profession, within the said limits, and either—]

³(a) has, during the financial year immediately preceding the year in which such election is held, paid, for such financial year, any sum in respect of the municipal rates specified in clause (a), (b), (c) or (d) of sub-section (1) of section 123 [or, in the case of the Municipality of Howrah, any sum as consolidated rate under the provisions of the Calcutta Municipal Act, 1923, as extended to that Municipality] or paid, in respect of municipal fees and taxes⁴ * * * * * for such financial year, an aggregate amount not less than the sum prescribed by the⁵ [Provincial Government] in this behalf as a minimum for the municipality:

Provided that any person shall be entitled to vote at the first election held under this Act who has, during the financial year immediately preceding the year in which

Ben. Act
III of 1923.

¹These words were substituted for the first 6 lines of clause (iii) by s. 3(1) of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

²The comma was omitted by s. 5(1) (i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³Sub-clause (a) was substituted for the original sub-clause (a) by s. 3 (2) of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

⁴These words were inserted by s. 5 (1) (ii) (a) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

⁵The brackets and words " (other than cart registration fees)" were omitted by s. 5 (1) (ii) (b), *ibid.*

⁶See foot-note 3 on p. 85, *ante*.

(Chapter III.—The Municipal Authorities.—Sec. 23.)

such election is held, paid, for such financial year, any sum in respect of rates as defined in section 15 of the Bengal Municipal Act, 1884, or

Ben. Act
III of
1884.

(b) has, during the said financial year, been assessed to income-tax, or

* (c) being a graduate or licentiate of any University, or having passed the Matriculation Examination of the Calcutta University, or a corresponding standard of the same or any other University, or the High School examination of the Board of Intermediate and Secondary Education, Dacca, or the Senior Madrasah Examination under the old or the reformed scheme, or the Sanskrit Title Examination of the Calcutta Sanskrit Association, or being a registered medical practitioner under the Bengal Medical Act, 1914, or holding a certificate authorising him to practise as a pleader or as a *mukhtear* or as a revenue agent, lives in a holding, or part of a holding in respect of which there has been paid¹ [during the said financial year, any sum as municipal rates for such financial year.]

Ben. Act
VI of
1914.

(3) No person shall be entitled to vote at an election of Commissioners in any municipality who has been adjudged by a competent court to be of unsound mind.

(4) A company, body corporate, firm, or other association of individuals, as such, shall not be entitled to vote in its own name at an election, but may subject to the provisions of the Bengal (Aliens) Disqualification Act, 1918, obtain the registration of the name of one of its members as its representative who will be entitled to vote if it possesses the qualifications set forth in sub-clause (a) ²[or] sub-clause (b) of clause (iii) of sub-section (2).

Ben. Act
III of
1918.

(5) (i) Every member of a joint family who is at the time of the preparation of the electoral roll and has been for a period of not less than twelve months immediately preceding such election resident within the limits of the municipality, if he is qualified under clauses (i) and (ii) of sub-section (2), shall be entitled to vote if such joint family has during the financial year immediately preceding

Page 102—

Put an asterisk against sub-clause (c) of clause (iii) of sub-section (2) of section 23 and insert the following footnote after footnote 2, namely:—

¹In the application of the Act to the district of Darjeeling, at the end of sub-clause (c) of clause (iii) of sub-section (2) in section 23 add the word “or” and then insert the following words as sub-clause (d), namely:—

“(d) has, during the said financial year, paid as rent in respect of the occupation by him of a holding or part of a holding an amount not less than the sum prescribed by the Provincial Government in this behalf as a minimum for the municipality.”

(Added and inserted by paragraph III of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38. dated the 5th December, 1945.]

of 1932.]

(Chapter III.—The Municipal Authorities.—Sec. 24.)

Ben. Act
III of
1923.

in which the election is held paid ¹[for such financial year] any sum in respect of the municipal rates specified in clauses (a), (b), (c) or (d) of sub-section (1) of section 123 ²[or in respect of the consolidated rate under the provisions of the Calcutta Municipal Act, 1923, as extended to the Municipality of Howrah] or has, during the said financial year, been assessed to income-tax.

(ii) If a joint family has during the said financial year paid in respect of municipal fees and taxes * * * * * for such financial year an aggregate amount not less than the sum prescribed by the ⁴[Provincial Government] in this behalf as a minimum for the municipality, every member of such joint family, who is at the time of the preparation of the electoral roll and has been for a period of not less than twelve months immediately preceding such election resident within the limits of the municipality, shall be entitled to vote if he is qualified under clauses (i) and (ii) of sub-section (2) and if his share of the said fees and taxes amounts to the minimum prescribed for that municipality :

Provided that where the total amount paid by a joint family does not equal or exceed the amount necessary to entitle every member of the joint family to vote the members of such joint family

Page 103—

In sub-section (1) of section 24, *strike out* the words beginning with “and the Commissioners” to the end of that sub-section, and *insert* the following note, namely:—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

Ben. Act
III of
1884.

[No. 41, dated the 22nd July, 1947.]
⁵[and the Commissioners elected or appointed under the Bengal Municipal Act, 1884, shall, subject to the provisions of section 59, be deemed to have vacated their offices on the assembling of the first meeting of the newly formed body of Commissioners, at which a quorum was or is present, after such general election, unless they have been re-elected or re-appointed, whether such meeting was or is held before or after the commencement of the Bengal Municipal (Amendment) Act, 1933.]

Ben. Act
IX of
1933.

¹These words were inserted by s. 5 (2) (i) (a) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²These words were substituted for the words “for such financial year” as inserted by the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933), by s. 5 (2) (i) (b) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³The brackets and words “(other than cart registration fees)” were omitted by s. 5 (2) (ii), *ibid.*

⁴See foot-note 3 on p. 85, *ante.*

⁵These words were added by s. 4 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

(Chapter III.—The Municipal Authorities.—Secs. 25, 25A.)

(2) The ¹[Provincial Government] may issue such orders as it may consider necessary to give effect to the provisions of this Act in regard to the holding of the first general election referred to in sub-section (1) and in regard to any matter incidental and ancillary thereto.

(3) General elections of Commissioners shall take place every fourth year on such days as the District Magistrate may fix for each municipality in his district :

Provided that where the term of office of the Commissioners of a municipality has been extended by the ¹[Provincial Government] under sub-section (5) of section 56, the general election for that municipality shall take place as early as possible after the expiration of such term on a day to be fixed by the District Magistrate.

(4) Elections and appointments in respect of casual vacancies shall be held and made at such other times as may be prescribed in accordance with the provisions of this Act.

Deposit by
candidates for
election.

25. (1) On or before the date fixed for the nomination of candidates, each candidate for election as a Commissioner shall deposit with the Chairman the sum of rupees one hundred in cash and no candidate shall be deemed to be duly nominated unless such deposit has been made :

Provided that the ¹[Provincial Government] may reduce the amount of deposit to fifty rupees in the case of such municipality as it thinks fit.

(2) If a candidate who has made a deposit under sub-section (1) withdraws his candidature before he is registered as a candidate or within three days of his registration or if his nomination is refused, his deposit shall be returned to him, and if a candidate dies before the poll is held, his deposit shall be returned to his legal representative.

(3) If the number of votes polled by a candidate ²[other than a candidate who is elected,] does not exceed ten *per cent.* of the total number of votes polled the deposit shall be forfeited to the Municipal Fund.

(4) The number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers counted.

Election
of ineligible
person to be a
Commissioner.

³25A. (1) Where a person who has been elected to be a Commissioner was not eligible for election on account of a disqualification mentioned in section 22, the election of such person shall be void upon the ¹[Provincial Government] making a declaration to that effect :

¹See foot-note 3 on p. 85, *ante*.

²These words were inserted by s. 6 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³Section 25A was inserted by s. 7, *ibid*.

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 26—28.)

Provided that such a declaration shall not be made if the question whether such person was so disqualified was raised in a petition under section 36 and decided on its merits or if such a petition, in which the question is raised, is pending disposal.

(2) No act done by such Commissioner in execution of the office before the time when the declaration under sub-section (1) is made shall be invalidated by reason of that declaration.

(3) If an election is declared void under sub-section (1) a date shall be fixed by the District Magistrate and the

Page 105—

In section 26,—

(a) omit the figures “17”;

(b) to section 26, add the words “Any person so appointed shall be deemed to be duly elected Commissioner”.

in failure of
lection, Commis-
ioners to be
ppointed by
overnment.

(Omitted and added by West Bengal Act XI of 1947,
section 6.)

[No. 43, dated the 5th June, 1949.]

oting to be by
ballot.

Provided that—

(i) when a poll is taken at any election of a Commissioner the voting at such election shall be by ballot to be conducted in the manner prescribed, and

(ii) no person shall be entitled to give more than one vote to any one candidate.

28. (1) Every person who by claiming a qualification which he knows that he does not possess to vote at a municipal election or by using false documents or by a false declaration or by any other deceitful means procures ²[or attempts to procure] the improper entry of the name whether of himself or of any other person in the electoral roll, or the improper omission of any name therefrom shall be punished with imprisonment which may extend to three months or with fine or with both.

Offences in
respect of
electoral list.

(2) Every municipal officer or servant or polling officer who wilfully makes or procures ³[or attempts to make or procure] any improper entry in the electoral roll or any

¹See foot-note 3 on p. 85, ante.

²These words were inserted by s. 8 (i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³These words were inserted by s. 8 (ii), *ibid*.

(Chapter III.—The Municipal Authorities.—Sec. 29.)

improper omission therefrom shall be punished with imprisonment which may extend to six months or with fine or with both.

Corrupt practices.

29. (1) A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person—

- (i) induces or attempts to induce by fraud or coercion any voter to give or refrain from giving a vote in favour of any candidate ;
- (ii) threatens any candidate or voter, or any person in whom a candidate or voter is interested with injury of any kind with a view to influence him in any way in connection with the election ;
- (iii) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure with a view to influence him in any way in connection with the election ;
- (iv) employs, instigates or threatens any form of social boycott of any voter or candidate or of anyone in whom such voter or candidate is interested ;
- (v) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any food or drink, or any money or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person, including a promise of spiritual salvation ;
- (vi) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;
- (vii) makes any payment or promise of payment to any person on account of the conveyance of any voter to or from any place for the purpose of recording his vote :

Provided that nothing contained in this clause shall prevent a conveyance being hired by a voter or by several voters at their joint cost, for the purpose of conveying him or them to or from the poll ;

- (viii) offers any money or valuable consideration to any person to induce him to withdraw from being a candidate at an election, or, being a candidate accepts any money or valuable consideration so offered ;

of 1932.]

(Chapter III.—The Municipal Authorities—Secs. 30, 31.)

- (ix) abets the doing of any of the acts specified in clauses (i) to (viii).

Explanations.—(a) A “ promise of individual advantage or profit to a person ” includes a promise for the benefit of the person himself, or of anyone in whom he is interested, but does not include a promise to further or oppose, or to vote for or against any particular municipal measure or work ;

- (b) no agent, clerk, messenger, or other person who may in accordance with rules made by the ¹[Provincial Government] be employed for remuneration by a candidate at an election shall by reason of such employment alone be deemed to come within the provision of this section.

(2) A corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

(3) Every person who is guilty of a corrupt practice at or in connection with an election held under the provisions of this Act shall be punished with imprisonment which may extend to six months or with fine or with both.

30. (1) Every person who applies for a ballot paper at an election, having already voted once at the same election and in the same ward or knowing that ²[his name is not included in the electoral roll], shall be punished with imprisonment which may extend to six months or with fine or with both.

Fraudulent voting and personation.

(2) Every person who applies for a ballot paper in the name of any other person, living or dead, or of a fictitious person, shall be punished with the same punishment.

31. Every polling officer, clerk or other person in attendance at the polling station who, except for some purpose authorised by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment which may extend to six months or with fine or with both.

Infringement of secrecy of election.

¹See foot-note 3 on p. 85, ante.

²These words were substituted for the words “ he is not qualified to vote thereat ” by s. 9 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter III.—The Municipal Authorities.—Secs. 32—36.)

Offences by
polling officers.

32. Every polling officer who permits a person to vote knowing that such person is not entitled to vote, or who prevents a person from voting knowing that such person is entitled to vote, shall be punished with imprisonment which may extend to six months or with fine or with both.

Falsifying
result of
election.

33. Every person who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by any omission shall be punished with imprisonment which may extend to one year or with fine or with both.

Procedure
before
magistrate.

34. No magistrate other than a magistrate of the first class shall take cognizance of any offence punishable under sections 28 to 33 (both inclusive) nor shall any magistrate take cognizance of such offence,—

(a) except on the complaint of a person whose name is on the electoral roll, and

(b) unless such complaint has been made within fourteen days of the date of the declaration of the result of any election to which the offence relates, or within seven days of the date on which the offence is alleged to have been committed, and

(c) except in the case of an offence punishable under

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Page 108—

In section 35, after the words, brackets and figures "sections 28 to 33 (both inclusive)" insert the words, brackets and figures "of this Act or of an offence punishable under section 4 or section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952".

(Inserted by West Bengal Act X of 1952, section 15.)

Order of
disquali

[No. 49, dated the 15th September, 1952.]

Pages 105-108—

Put an asterisk against sections 28 to 34 (both inclusive) and insert the following foot-note, namely:—

Proceed
not unde
election.

*The provisions of sections 28 to 34 (both inclusive) shall not apply to cases to which the provisions of West Bengal Act X of 1952 may be applicable, vide West Bengal Act X of 1952, s. 15.

the result of the election file a petition before the District Judge of the district within which the election has been or

of 1908.]

(Chapter III.—The Municipal Authorities.—Secs. 37, 38.)

should have been held and shall at the same time deposit fifty rupees in court as security for the costs likely to be incurred :

Provided that the validity of such election shall not be questioned in any such petition—

- (a) on the ground that the name of any person qualified to vote has been omitted from the electoral roll ; or
- (b) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll.

37. (1) Where a petition has been filed under section 36 the District Judge, or any judicial officer subordinate to him and not below the rank of a Subordinate Judge (hereinafter referred to in this chapter as the Judge) to whom the District Judge may transfer the petition, may¹[hold such inquiry in accordance with the prescribed procedure as he deems necessary].

Procedure and powers of Judge holding inquiry.

(2) For the purposes of the said inquiry the Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a civil court, and may also direct by whom the whole or any part of the costs of such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

Act V.
of 1908.

(3) The Judge may, at any stage of the proceedings, require the petitioner to deposit in court a further sum as the costs incurred or likely to be incurred by any respondent, or to give security, or further security for the payment of the same, and if, within the time fixed by him, or within such further time as he may allow, such costs are not deposited or such further security is not furnished, as the case may be, may dismiss the petition.

2*

38. ²[If the Judge, after holding an inquiry under section 37, is satisfied that]—

Setting aside of election.

- (a) a candidate has committed any corrupt practice within the meaning of section 29 for the purpose of the election, or

¹These words were substituted for the original words by s. 10 (i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²Sub-section (4) was omitted by s. 10 (ii) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³These words were substituted for the words " The Judge, if he is satisfied that" by s. 11 (1), *ibid.*

[Ben. Act XV]

(Chapter III.—The Municipal Authorities.—Secs. 39—39B.)

- (b) the election has not been a free election by reason of the general employment of bribery or undue influence as defined in the Indian Election ~~Offences and Inquiries Act, 1920~~ **XXXIX of 1920**, or by reason of any form of general intimidation, including any form of social boycott, or
- (c) the result of election has been materially affected by any non-compliance with this Act or any rule made under this Act or by any mistake in the forms required thereby or by any error, irregularity, or informality on the part of any officer charged with or carrying out any duty under this Act or rules made under this Act, or
- (d) the result of election has been materially affected by improper acceptance or refusal of candidate's nomination,

¹[he] shall set aside the election of such candidate, if he has been elected, and if the election is set aside for any cause which is the result of acts of a candidate or his agents may declare that candidate to be disqualified for the purpose of such fresh election as may be held under section 42.

Scrutiny of votes and declaration in other cases.

39. If, in any case to which section 38 does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of ²[each] candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected. ³[Every candidate at the election to which the dispute relates shall be deemed to be a party to such dispute:]

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

Confirmation of election by the Judge.

⁴39A. If the Judge after holding an inquiry under section 37 is satisfied that no ground exists for setting aside the election in the manner provided in section 38 or modifying it in the manner provided in section 39, he shall confirm the election.

Decision of the Judge to be final on proceedings to set aside election.

⁵39B. The decision or order of the Judge under section 38, 39 or 39A shall be final.

¹This word was inserted by s. 11 (2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²This word was substituted for the words "each such" by s. 12 (1), *ibid.*

³These words were inserted by s. 12 (2), *ibid.*

⁴Sections 39A and 39B were inserted by s. 13, *ibid.*

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 40—44.)

40. If the Judge sets aside an election under section 38, he may, if he thinks fit, declare any person by whom a corrupt practice has in his opinion been committed within the meaning of section 29 to be disqualified from being a candidate for election in that or any other municipality for a period not exceeding six years, and the Judge's decision shall be final :

Disqualification of persons from being candidates who commit corrupt practices.

Provided, however, that such person may, by an order of the ¹[Provincial Government], be at any time relieved from such disqualification.

41. Where a candidate, who has been elected to be a Commissioner, is declared by the Judge not to have been duly elected, acts done by him in execution of the office before the time when the decision is certified to the Commissioners shall not be invalidated by reason of that declaration.

Saving of acts done by a Commissioner before his election is set aside.

42. If an election is set aside by the Judge, a date shall forthwith be fixed and the necessary steps taken for holding a fresh election for filling up the vacancy, as though it had been a casual vacancy.

Fresh election when election set aside.

43. No election of a Commissioner shall be called in question in any court except under the procedure provided by this Act, and no order passed in any proceeding under sections 36 to 40 (both inclusive), shall be called in question in any court and no court shall grant an injunction—

Bar to interference by courts in election matters.

- (i) to postpone an election of a Commissioner, or
- (ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a municipality of which he has been elected a Commissioner, or
- (iii) to prohibit the Commissioners formally elected or appointed for a municipality from entering upon their duties.

44. For the purpose of election of Commissioners the ¹[Provincial Government] may, with respect to municipalities generally or to any municipality or class of municipalities, make such rules, as it may think fit, to regulate and determine—

Rules.

(a) the alteration of—

- (i) the boundaries of, and
- (ii) the number of Commissioners apportioned to,

any ward of a municipality ;

¹See foot-note 3 on p. 85, *ante*.

(Chapter III.—The Municipal Authorities.—Sec. 45.)

*Page 112—

In section 44, omit clause (d).

(Omitted by West Ben. Act XXV of 1950, section 3.)

[No. 45, dated the 2nd December, 1950.]

*This section came into force with retrospective effect.

Page 112—

Put a pair of asterisks against section 45 and insert the following footnote after the footnote starting with one asterisk, namely:—

**In the application of the Act to the district of Dacca, substitute the

"45. (1) Page 112—

- (2) The names of the persons appointed to be Commissioners which ever publication may be later" substitute the words "where Commissioners are appointed, within twenty-one days from the date of the publication of the names of the persons appointed".

(Substituted by West Bengal Act XI of 1947, section 7.)

- (3) In the [No. 43, dated the 5th June, 1949.]

Provided that, instead of electing a Chairman under sub-section (2) or sub-section (3), the Commissioners may, within the period prescribed for the election of a Chairman, at a meeting attended by not less than two-thirds of the Commissioners, request the Provincial Government to appoint a Chairman and such Chairman shall be appointed by name.

- (4) The Provincial Government may at any time remove the name of any municipality from Schedule X.
- (5) The Chairman of the Commissioners of a municipality mentioned in Schedule X shall be deemed to have vacated office as soon as the name of that municipality is removed from the said Schedule.
- (6) If the election of a Commissioner who is also elected Chairman is set aside by the Judge under section 37, the Chairman shall be deemed to have vacated his office from the date of receipt by the Commissioners of such order.
- (7) The meeting to be held under sub-section (2) shall be convened by the Chairman of the out-going body of Commissioners, or in the case of a newly created and constituted municipality by the Magistrate, and, if notices of the meeting are not issued within ten days from the date referred to in sub-section (2), may be convened by requisition of any three of the Commissioners. Seven clear days' notice shall be given of the meeting.
- (8) The meeting to be held under sub-section (3) shall be convened by the Vice-Chairman and, if notices of the meeting are not issued within ten days from the date referred to in sub-section (3), there shall be a like right of convention thereof by three Commissioners and a like period of notice to that provided by sub-section (7)."

(Substituted by paragraph V of notification No. 3435E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

112-113—

In section 45—

(a) In sub-section (1) for the word "twenty-one" in the two places where it occurs, *substitute* the word "thirty";

(c) in sub-section (2) for the word "twenty-one" *substitute* the word "thirty";

(d) in sub-section (3) for the figures "37" *substitute* the figures "38";

(e) for sub-section (4), *substitute* the following sub-section, namely:—

"(4) The meeting to be held under sub-section (1) shall be convened by the Magistrate. Seven ^{clear days'} notice shall be given of the meeting."; and ^{on elect.}

(f) in sub-section (5) for the words figure and brackets "there shall be a like right of convention thereof by three Commissioners and a like period of notice to that provided by sub-section (4)" *substitute* the words "may be convened by requisition of any three of the Commissioners. Seven clear days' notice shall be given of the meeting."

(Substituted and added by West Bengal Act XXVIII of 1951, section 6.)

[No. 48, dated the 1st April, 1952.]

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rman.

Vice-Chairman.

49. If any dispute arises as to the election of a Chairman or Vice-Chairman the matter shall be referred to the [Provincial Government], whose decision shall be final and shall not be questioned in any court. ^{Dispute as to elections of Chairman or Vice-Chairman.}

50. The names of all persons elected or appointed as Chairman, Vice-Chairman or Commissioners shall be published in the [Official Gazette]. ^{Publication of elections and of nominations.}

51. (1) The Chairman shall for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers ^{Powers of Chairman.}

Page 113—

Put a pair of asterisks against section 48 and insert the following footnote after the footnote starting with one asterisk, namely:—

"In the application of the Act to the district of Darjeeling, after section 48, insert the following section, namely:—

"48A. If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be the Chairman or the Commissioner, as the case may be."

(Inserted by paragraph VII of notification No. 3435E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

(Chapter III.—The Municipal Authorities.—Secs. 52—55.)

(2) In any municipality where an Executive Officer is appointed under clause (ii) of sub-section (1) of section 67 the Commissioners at a meeting may, notwithstanding anything contained in sub-section (1), delegate to him all or any of the powers of the Commissioners referred to in the said sub-section and upon such delegation the Chairman shall cease to exercise the powers so delegated to the Executive Officer.

Delegation of duties or powers to Vice-Chairman or certain officers.

52. The Commissioners at a meeting specially convened for the purpose or the Chairman may delegate to the Vice-Chairman or to the holder of any of the other offices referred to in sub-section (1) of section 73, all or any of the duties or powers of a Chairman as defined in this Act, and may at any time in the like manner withdraw or modify the same :

Provided that in the case of a Chairman appointed under section 46 the delegation of duties or powers to the Vice-Chairman by the Commissioners shall be subject to the approval of the ¹[Provincial Government] :

Provided also that nothing done by the Vice-Chairman which might have been done under the authority of a delegation from the Chairman shall be invalid for want of or defect in such delegation if it be done with the express or implied consent of the Chairman and subsequently approved by the Commissioners at a meeting.

Delegation of powers by the Executive Officer.

53. The Executive Officer may with the approval of the Commissioners at a meeting delegate all or any of his powers to the holder of any office under the Commissioners.

Duties of Vice-Chairman.

54. The Vice-Chairman—

- (a) shall, during a vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any duty and, when occasion arises, exercise any power of the Chairman,
- (b) shall, at any time, perform any duty and exercise, when occasion arises, any power delegated to him under section 52.

Grant of leave to Chairman and Vice-Chairman.

55. (1) The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

(2) If the Chairman or Vice-Chairman is absent from his duties during any one year for more than the three months allowable by way of leave under this section, he shall be declared by the ¹[Provincial Government] to have vacated his office unless such absence is sanctioned by the ¹[Provincial Government].

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 56, 57.)

* 56. (1) Except as otherwise provided in this Act,—

Tenure of office
of Chairman,
Vice-Chairman
and Commis-
sioners.

(a) a Commissioner, whether elected or appointed, shall hold office for four years commencing from the date of the first meeting of the newly-formed body of Commissioners after a general election of Commissioners in the municipality at which a quorum is present ;

(b) an elected Chairman and a Vice-Chairman shall, subject to the provisions of section 59, hold office for four years from the date of his election and an appointed Chairman shall subject to the provisions of section 59 hold office for such period not exceeding four years as the ¹[Provincial Government] may in each case determine.

(2) The term of four years referred to in sub-section (1) shall be held to include any period which may elapse between the expiry of the said four years and the date of the first meeting of the newly-formed body of Commissioners at which a quorum is present.

(3) A person ceasing to be a Commissioner or to be Chairman or Vice-Chairman by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment.

(4) If the ¹[Provincial Government] in the exercise of its powers under clause (i) of sub-section (1) of section 6 increases the number of Commissioners of any municipality at any time before the expiry of the term of four years, provided by clause (a) of sub-section (1), the term of office of the Commissioners thus added shall not extend beyond the said term of four years as above defined.

(5) The ¹[Provincial Government] may extend the term of office of the Commissioners of a municipality for a period not exceeding one year beyond the term of four years, provided by clause (a) of sub-section (1), if in special circumstances (to be specified in the notification) it so thinks fit.

Page 115—

In section 56,—

- (a) in clause (a) of sub-section (1), omit the words "whether elected or appointed"; and
- (b) in sub-section (3) after the words "or reappointment", add the words and figures "for the purpose of section 26".

(Omitted and added by West Bengal Act XI of 1947, section 8.)

[No. 43, dated the 5th June, 1949.]

[No. 45, dated the 2nd December, 1950.]

[Ben. Act XV

(Chapter III.—The Municipal Authorities.—Sec. 57.)

notice has been given,] an oath or affirmation of his allegiance to the Crown in the following form, namely :—

I, A. B., having been ^{elected}_{appointed} a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duties upon which I am about to enter."

(2) Any person who having been elected or appointed a Commissioner fails to make, within three months of the date on which his term of office commences, the oath or affirmation laid down in sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Notwithstanding anything contained in the Indian Oaths Act, 1873, every elected or appointed Commissioner of a municipality holding office at the commencement of this Act shall, at the first meeting of the Commissioners which he attends after the commencement of this Act, make an oath or affirmation of his allegiance to the Crown in the following form, namely :— X of 1873.

"I, A. B., a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duties of a Commissioner of this municipality."

(4) Any elected or appointed Commissioner holding office at the commencement of this Act who fails to make, within three months from the commencement of this Act, the oath or affirmation laid down in sub-section (3) shall cease to hold his office and his seat shall be deemed to have become vacant.

¹(5) Where any person has failed whether before or after the commencement of the Bengal Municipal (Amendment) Act, 1933, to make the oath or affirmation of allegiance or has made such oath or affirmation otherwise than in accordance with the provisions of this section and the ²[Provincial Government] is satisfied that the failure of such person to comply with the provisions of this section was due to inadvertence or misapprehension or that such person is an alien exempted from the disabilities imposed by the Bengal (Aliens) Disqualification Act, 1918, in respect of election or appointment as a Commissioner, the ³[Provincial Government] may declare that the failure of such person to comply with the provisions of this section is condoned.

Ben. Act
IX of
1933.Ben. Act
III of
1918.

¹Sub-sections (5), (6) and (7) were added by s. 6 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

²See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter III.—The Municipal Authorities.—Sec. 58.)

¹(6) When a declaration has been made by the ²[Provincial Government] under sub-section (5) in respect of any person, such person shall be deemed to have continued notwithstanding his default to hold his office, and all acts done by him or by the Commissioners or by any municipal officer or servant before the date of the said declaration shall be and shall be deemed to have always been as valid and lawful as if the person in respect of whom the declaration has been made had made the oath or affirmation of allegiance in accordance with the provisions of this section.

¹(7) Where all the Commissioners of a municipality have failed to make the oath or affirmation under this section or where the number of Commissioners who have made the oath
Page 117— sufficient to allow of a quorum being

In sub-section (7) of section 57,—

- (a) (i) omit the words “and fresh appointment”; and
(ii) after the words “or appointment” add the words and figures, “under section 26”.

(Omitted and added by West Bengal Act XI of 1947, section 9.)

[No. 43, dated the 5th June, 1949.]

sioners of the municipality by a fresh general election and fresh appointment and the persons who failed to make the oath or affirmation shall not be deemed disqualified for election or appointment.

58. (1) If the election of any Commissioner ⁴[is set aside] under the provisions of section 38 and the Judge does not declare that person to be disqualified for the purpose of such fresh election as may be held under section 42, the said person shall be eligible for re-election in the vacancy so caused.

Filling of vacancies and tenure of office of person filling vacancy.

(2) If the election of any Commissioner is set aside under the provisions of section 38 and the Judge declares that person to be disqualified for the purpose of such fresh election as may be held under section 42, or if any Commissioner, Chairman or Vice-Chairman is by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of section 55 or section 57 unable to complete his full term of office, or if a

¹See foot-note 1 on p. 116, *ante*.

²See foot-note 3 on p. 85, *ante*.

³See foot-note 1 on p. 89, *ante*.

⁴These words were substituted for the words “is not set aside” by s. 7 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

(Chapter III.—The Municipal Authorities.—Secs. 59—61.)

Chairman or Vice-Chairman is granted leave under section 55 the vacancy so caused shall be filled by the appointment or election, as the case may be, of another person.

(3) The person elected or appointed to a vacancy referred to in sub-section (1) or sub-section (2) shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

Vacation
of office by
Chairman and
Vice-Chairman
after general
election.

59. *(1) Notwithstanding anything contained in section 56, a Chairman and a Vice-Chairman shall be deemed to have vacated office as soon as the newly formed body of Commissioners has assembled at the meeting held under the provisions of sub-section (1) of section 45.

* * (2) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall proceed to elect a Chairman and a Vice-Chairman :

Provided that if the Commissioners at the meeting fail to elect a Chairman, the Chairman of the outgoing body of Commissioners shall thereafter resume office and continue to hold the same until the new Chairman is elected or appointed.

Resignation of
Chairman, Vice-
Chairman or
Commissioner.

60. (1) An appointed Chairman may resign by notifying in writing his intention to do so to the ¹[Provincial Government], and on such resignation being accepted shall be deemed to have vacated his office.

(2) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.

(3) A Vice-Chairman or a Commissioner may resign by notifying his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting.

(4) On a resignation under sub-section (2) or sub-section (3) being accepted by the Commissioners at a meeting, the

Page 118—

Put a pair of asterisks against sub-section (2) of section 59 and insert the following footnote after the footnote starting with one asterisk, namely:—

**In the application of the Act to the district of Darjeeling for sub-section (2) of section 59 substitute the following sub-section, namely:—

"(2) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall take such steps as may be necessary for the election or appointment of the Chairman and for the election of the Vice-Chairman, in accordance with the provisions of sections 45 and 48."

(Substituted by paragraph X of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter III.—The Municipal Authorities.—Sec. 62.)

62. (1) The ¹[Provincial Government] may remove an elected Commissioner on the ground of misconduct in the discharge of his duties if the removal is recommended by a resolution of the Commissioners passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the whole number of Commissioners of the municipality.

Removal of Commissioners

(2) The ¹[Provincial Government] may remove any Commissioner—

- (a) if he refuses to act or becomes incapable of acting, or is declared insolvent, or if after his election as Commissioner, he is convicted of an offence which in the opinion of the ¹[Provincial Government] involves moral turpitude ; or
- (b) if he has been declared by the ¹[Provincial Government] by notification issued after due inquiry to have violated his oath of allegiance ; or
- (c) if he absents himself from meetings of the Commissioners for three months continuously without having obtained permission from the Commissioners at a meeting ; or
- (d) if he, being a legal practitioner without the consent of the Chairman, acts or appears in any suit or other proceeding, on behalf of any other person, against the Commissioner, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners ; or
- (e) if he knowingly acquires or continues to have, directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Commissioners or holds any office of profit under the Commissioners. If

Page 119—

In clause (f) of sub-section (2) of section 62, for the words "one year" substitute the words "six months".

(Substituted by West Bengal Act XXVIII of 1951, section 7.)

[No. 48, dated the 1st April, 1952.]

means endeavours to make changes in the constitution shall not be deemed to have thereby violated his oath of allegiance.

¹See foot-note 3 on p. 85, ante.

(Chapter III.—The Municipal Authorities.—Sec. 63.)

(3) Before removing a Commissioner under sub-section (1) or sub-section (2) the ¹[Provincial Government] shall allow the Commissioner concerned an opportunity of being heard.

(4) All acts and proceedings of any Commissioner removed under sub-section (1) or sub-section (2) shall, if done previously to such removal, be valid and effectual to all intents and purposes.

(5) Notwithstanding anything contained in clause (e) of sub-section (2) no person shall be deemed to be disqualified thereunder by reason only—

(a) of his having a share or interest in—

- (i) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder ; or
- (ii) any lease, or purchase of land, or any agreement for the same ; or
- (iii) any agreement for the loan of money, or any security for the payment of money only ; or
- (iv) any newspapers in which any advertisement relating to the affairs of the municipality is inserted ;

(b) of his being professionally engaged on behalf of the Commissioners as a legal practitioner and receiving a fee for services rendered in his professional capacity :

Provided that no such Commissioner shall act as a Commissioner or member of a committee, or take part in any proceedings relating to any matter in which he has a share or interest as described in clause (a) of this sub-section.

**Effect of
removal of a
Commissioner.**

63. (1) A Commissioner who has been removed from his office under sub-section (1) or under clause (a) or clause (b) of sub-section (2) of section 62 shall not be eligible for election or re-election as a Commissioner, without the consent of the ¹[Provincial Government].

(2) A Commissioner who has been removed from his office in any municipality under clauses (c), (d), (e) or (f) of sub-section (2) of section 62 shall not be elected or re-elected a Commissioner of that municipality within the period of three years from the date of his removal.

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In sub-section (3) of section 63—

- (a) *after* the word “Chairman” occurring for the first time, *insert* the words “or a Vice-Chairman”; and
- (b) *after* the word “Chairman” occurring for the second time, *add* the words “or Vice-Chairman, as the case may be.”

(Inserted and added by West Bengal Act XXVIII of 1951. section 8.)

[No. 48, dated the 1st April, 1952.]

the purposes of this Act.

65. The ¹[Provincial Government] may make rules—

- (a) prescribing the manner of holding the election of the Chairman and Vice-Chairman, and
- (b) regulating the payment of travelling expenses to the Chairman, Vice-Chairman or a Commissioner.

Power of Provincial Government to make rules.

Establishment.

66. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder from time to time, determine what officers and what servants of the Commissioners are necessary for the municipality and may fix the salaries and allowances to be paid and granted to such officers and servants.

Appointment of subordinate officers.

(2) Subject to the scale of establishment approved by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place :

Provided as follows :

- (i) a person shall not be appointed to an office carrying a monthly salary of more than fifty rupees or a salary rising by periodical increments to more than fifty rupees without the sanction of the Commissioners at a meeting, and an officer or servant whose post carries a monthly salary of more than twenty rupees shall not be dismissed without such sanction ;
- (ii) no appointment carrying a monthly salary of more than two hundred rupees or a salary rising by periodical increments to more than two hundred rupees shall be created without the sanction of the ¹[Provincial Government], and every nomination to, and dismissal from, any such appointment shall be subject to confirmation by the ¹[Provincial Government] ;

¹See foot-note 3 on p. 85, ante.

(Chapter III.—The Municipal Authorities.—Sec. 67.)

- (iii) no person holding an office carrying a monthly salary of one hundred rupees or more shall be dismissed unless such dismissal is sanctioned by a resolution of the Commissioners passed at a special meeting called for the purpose and, except with the consent of the ¹[Provincial Government] unless such resolution has been supported by the votes of not less than two-thirds of the whole number of Commissioners of the municipality.

Appointment of Executive Officer, Secretary, etc., on requisition by Government.

67. (1) Notwithstanding anything contained in section 66 the ¹[Provincial Government] may, if it thinks necessary after consulting the Commissioners, require—

- (i) the Commissioners of any municipality or class of municipalities to appoint at a meeting all or any of the following officers—

- (a) a Secretary,
- (b) an Engineer,
- (c) a Health Officer, and
- (d) one or more Sanitary Inspectors ;

- (ii) the Commissioners of any municipality or class of municipalities the income (excluding opening balance) of which is in the opinion of the ¹[Provincial Government] above one lakh of rupees a year to appoint at a meeting an Executive Officer.

(2) An officer appointed under sub-section (1) shall be of such class or possess such qualifications as may be prescribed and shall be paid out of the Municipal Fund such salary and allowances, if any, as the Commissioners at a meeting, subject to the approval of the ¹[Provincial Government], may fix.

(3) Except as is provided in sub-section (3) of section 73, no Executive Officer, Secretary, Engineer, Health Officer or Sanitary Inspector shall be removed from office by the Commissioners except at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the whole number of Commissioners of the municipality.

(4) The provisions of clause (i)(a), (b) and (c) of sub-section (1) shall not, unless the ¹[Provincial Government] for reasons to be recorded in writing so directs, apply to any municipality, the income of which falls below one lakh of rupees a year.

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 68, 69.)

68. (1) The Executive Officer shall be the principal executive officer of the Commissioners and all other officers and servants of the Commissioners shall be subordinate to him. He shall have the same right of being present at a meeting of the Commissioners or of any standing or special committee, and of taking part in the discussions thereat as if he were a Commissioner or a member of such committee and with the consent of the Chairman or the president of the meeting, as the case may be, he may at any time make a statement or explanation of facts, but he shall not vote upon, or make, any proposition at such meeting.

Power of the Executive Officer.

(2) Subject to the provisions of sub-section (2) of section 51 the Executive Officer shall act in respect of all other matters under the direction of the Chairman through whom he shall be responsible to the Commissioners.

69. (1) The Commissioners, at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the Commissioners present and voting at such meeting shall have voted, may, subject to the approval of the ¹[Provincial Government], make rules—

Power to frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

- (a) for the granting of pensions, gratuities and bonuses out of the Municipal Fund ;
- (b) for the granting of compassionate allowances and gratuities to members of the families of deceased municipal officers and servants ; and
- (c) for the creation and management of a provident or annuity fund (which may be combined with a system of bonuses based on length of service), for compelling contributions to such provident or annuity fund on the part of their officers and servants, and for supplementing such contributions out of the Municipal Fund.

(2) The Commissioners at a meeting may, from time to time, in accordance with such rules—

- (i) grant pensions or bonuses or both or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit ;
- (ii) grant advances out of such provident fund to any of their officers or servants, as they may see fit ;
- (iii) grant a gratuity based on the length of service of the deceased to any member of the family of any of their officers or servants who die while in the service of the Commissioners ;

¹See foot-note 3 on p. 85, ante.

(Chapter III.—The Municipal Authorities—Secs. 70, 71.)

(iv) by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting have voted,—

(a) grant a special pension or gratuity or both to any member of the family of any of their officers or servants who has died from disease or injury contracted in the discharge of a duty which was attended with extraordinary bodily risk, and

(b) in addition to other benefits grant a bonus to any officer or servant in recognition of work or service of exceptional merit.

(3) For the purposes of this chapter the family of a municipal officer or servant shall be deemed to include his wife, his children, and his father, mother, brother or sister dependent upon him for support.

Contributions
in the case of
servants of
the Crown
employed by the
Commissioners.

70. (1) The Commissioners shall contribute to the pension, gratuities and allowances of any servant whose services are lent or transferred by ¹[any Government] to the Commissioners.

(2) Such contribution shall be to the extent prescribed by ²[the conditions of service under which the officer is serving the Crown].

Notice to be
given by ~~mehters~~
of intention to
withdraw from
service.

71. (1) A *mehter* or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall not withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

(2) Any *mehter* or other such person who withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a period which may extend to one month or to fine not exceeding fifty rupees or both and shall forfeit all salary which may be due to him.

(3) The ³[Provincial Government] may direct that on and from a specified future date the provisions of sub-sections (1) and (2) shall apply also to any other specified class of servants of the Commissioners whose functions intimately concern the public health or safety.

¹These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the rules of the Government Civil Pension and Leave Codes", *ibid*.

³See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter III.—*The Municipal Authorities.*—Secs. 72—74.)

72. (1) No person shall be eligible for employment as a municipal officer or servant if he has, directly or indirectly by himself or his partner or employer or employé, any share or interest in any contract or employment with, by, or on behalf of the municipality.

Prohibition of having share or interest in contract or employment with Commissioners.

(2) If any municipal officer or servant acquires, directly or indirectly as aforesaid, any such share or interest otherwise than as such officer or servant he shall cease to be a municipal officer or servant and his office shall become vacant from the date on which he is removed from office by the authority which appointed him ; and he shall also be liable to be punished as provided in section 500.

(3) Nothing in sub-sections (1) and (2) shall apply to any such share or interest as under sub-section (5) of section 62 it is permissible for a Commissioner to have without being thereby disqualified to be a Commissioner.

73. (1) A person shall not be eligible for the office of Executive Officer, Secretary, Engineer, Health Officer, Superintendent of Waterworks, Sanitary Inspector, Assessor, Tax-Collector, Accountant or Overseer of a municipality if he is seriously in debt.

Indebtedness.

(2) If any question arises as to whether any person is seriously in debt within the meaning of sub-section (1), it shall be decided—

- (a) in the case of a candidate for any office mentioned in sub-section (1), appointment to which is subject to the approval of the ¹[Provincial Government]—by the ¹[Provincial Government], and
- (b) in the case of a candidate for any other office mentioned in sub-section (1)—by the authority which makes appointment to such office.

(3) If any person holding any of the offices mentioned in sub-section (1) is found, by the authorities respectively referred to in sub-section (2), to be seriously in debt, he may be removed from his office by the authority which appointed him.

74. Every person applying for employment in a municipality shall, if he is related by a blood relationship to, or is closely connected by marriage with, the Chairman, Vice-Chairman or any Commissioner, or any of the officers mentioned in sub-section (1) of section 73, notify in writing the fact and the nature of such relationship or connection to the authority making the appointment before the appointment is made, and in default thereof the appointment, if made, shall be deemed to be invalid.

Relationship of candidates for employment in the municipality.

¹See foot-note 3 on p. 85, *ante*.

The Bengal Municipal Act, 1932.

[Ben. Act XV

(Chapter III.—*The Municipal Authorities.*—Secs. 75—77.)

Power to
Commissioners
to make rules.

75. The Commissioners at a meeting may, subject to the sanction of the ¹[Provincial Government], make rules as to—

- (i) the duties, appointment, leave, fining, suspension and removal of municipal officers and servants ;
- (ii) the nature and amount of security to be furnished by different classes of municipal officers or servants for the proper discharge of their duties.

Power to
Provincial
Government to
make rules.

76. The ¹[Provincial Government] may make rules—

- (a) prescribing the qualifications of candidates for employment by the Commissioners as Engineers, Health Officers, Superintendents of Water-works, Sanitary Inspectors, Assessors, Accountants, Overseers, female medical practitioners, nurses, health visitors, midwives and veterinary practitioners ;
- (b) prescribing the proportion of the pay and allowances of ²[servants of the Crown] employed by the Commissioners which shall be borne by the Commissioners, and providing for the control of such officers ; and
- (c) prescribing the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications :

³Provided that where the services of any servant of the Crown are lent or transferred by any Government other than the Provincial Government, the rules to be made under clause (b) of this section shall be made by that Government.

Conduct of Business.

Ordinary
meetings.

77. (1) The Commissioners shall meet for the transaction of business at their office, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

(2) If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

¹See foot-note 3 on p. 85, *ante*.

²These words were substituted for the words "Government Officers" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The proviso was inserted, *ibid*.

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 78—82.)

78. (1) The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting of the Commissioners on a requisition signed by not less than one-third of the whole number of Commissioners of the municipality.

Meeting on requisition by Commissioners.

(2) If the Chairman or Vice-Chairman fails to give notice of a special meeting to be held within fifteen days after such requisition has been made, the meeting may be called on seven days' notice by any three of the Commissioners of the municipality.

79. The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

Person to preside at meetings.

80. (1) All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act.

Decision of questions and casting vote.

(2) In case of equality of votes, the person presiding shall have a second or casting vote.

81. No Commissioner or member of a standing or other committee shall vote on any matter affecting his own pecuniary interest or on any question which regards exclusively the assessment of himself or the valuation of any property in respect of which he is in any way directly interested or of any property of or for which he is manager or agent or his liability to any tax, rate, toll or fee.

Commissioners disqualified from voting on certain questions.

82. (1) No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman, or, under section 45 or section 78, by persons signing a requisition, or under section 45 by the Magistrate, nor except for the election of a person to preside for the purposes of sub-section (3) unless a quorum shall be present.

Quorum and adjournment for want thereof.

(2) A quorum shall be, in any municipality in which the Commissioners are more than fifteen, five ;

in any other municipality, a number being not less than one-third of the whole number of Commissioners :

Provided that in cases where the whole number of Commissioners is not evenly divisible by three, the one-third shall be ascertained by taking the number next above the whole number which is evenly divisible by three, as the number to be divided.

(3) If, at the time appointed for a meeting, or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the Chairman or in his absence the Vice-Chairman and three

(Chapter III.—*The Municipal Authorities.*—Secs. 83—86.)

days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Notice of list of
business and of
meetings.

83. A list of the business to be transacted at a meeting and, in the case of a meeting called on a requisition, the terms of the requisition shall be sent to every Commissioner at least three days before the date appointed for the meeting, and no business of which such notice has not been given shall be brought forward at a meeting.

Minutes of
proceedings.

84. (1) Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the person presiding over the meeting, and such book shall be open to the inspection of the tax-payers.

(2) A copy of the minutes of the proceedings of all meetings of the Commissioners shall within seven days be forwarded by the Chairman to the District Magistrate.

(3) The minutes shall be laid before the next meeting of the Commissioners for confirmation and shall be also signed at such meeting by the person presiding thereat.

Inspection of
books by
Commissioners.

85. A Commissioner shall have the right to inspect all books of the municipality at such times as the Commissioners at a meeting may fix for this purpose :

Provided that the Chairman may, for reasons to be recorded by him in writing, direct that any particular book shall not be inspected without the direction of the Commissioners at a meeting.

Standing Committees.

Formation of
standing
committees.

86. (1) The Commissioners at a meeting may, from time to time, appoint standing committees and by specific resolution, delegate to, or withdraw from such committees any of their functions, powers and duties and may also from time to time, by like resolution refer to them for inquiry and report, or for opinion such subjects relating to the powers or duties of the Commissioners, as the Commissioners at a meeting may think fit.

(2) Each standing committee shall consist of Commissioners who shall not be less than two-thirds of the whole number of the members of the committee and of such other persons not exceeding one-third in number as the Commissioners at a meeting may, from time to time, by a specific resolution, determine and elect for this purpose.

(3) Each such committee shall perform the duties assigned to it by this Act or the rules made thereunder, and may

of 1932.]

(Chapter III.—The Municipal Authorities.—Secs. 87, 88.)

exercise the powers delegated to it, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

(4) All the proceedings of any such committee shall be subject to confirmation or modification by the Commissioners at a meeting, unless in special cases the Commissioners at a meeting otherwise direct.

(5) All questions regarding the removal or resignation of members of a committee shall be settled by the Commissioners at a meeting.

Joint Committees.

87. (1) Subject to the prescribed restrictions the Commissioners of any municipality may join with any other local authority in constituting out of their respective bodies a joint committee, for any purpose in which they are jointly interested, and in delegating to any such joint committee any power which might be exercised by the Commissioners or any of the local authorities concerned.

Formation
of joint
committees.

(2) Such joint committee may, from time to time, make rules as to its proceedings, and as to the conduct of correspondence relating to the purpose for which it is constituted.

88. (1) If a dispute arises between the Commissioners of a municipality and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the ¹[Provincial Government] whose decision shall be final and shall not be questioned in any court :

Decision of
disputes between
local authorities.

²Provided that if the dispute is between the Commissioners and a Cantonment Authority or the Port Authority of a major port, the decision of the Provincial Government shall be subject to the concurrence of the Central Government.

(2) If such dispute arises between the Commissioners of two municipalities who have for any purpose constituted or who may, for the specific purpose of settling the dispute constitute a joint committee under the provisions of section 87 such joint committee shall, in the first instance, inquire into the said dispute and after taking such evidence, and calling for such papers as it may think fit, shall deliver a written award on the matters in dispute, which shall be binding on the Commissioners of both municipalities, provided that the Commissioners of either of the said municipalities may

¹See foot-note 3 on p. 86, *ante*.

²This proviso was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter III.—The Municipal Authorities.—Secs. 89, 90.)

appeal against such decision to the ¹[Provincial Government], whose orders shall be final and shall not be questioned in any court :

Provided that no dispute shall be decided under this section until the Commissioners of the municipalities or the local authorities concerned have been heard or have had a reasonable opportunity of being heard.

(3) The ¹[Provincial Government] may regulate by rules the relations to be observed between Commissioners of municipalities and other local authorities in any matter in which they are jointly interested :

²Provided that any rules regulating the relations to be observed between the Commissioners of Municipalities and Cantonment Authorities or the Port Authorities of major ports, shall have no effect until they are approved by the Central Government.

Special Committees.

Formation
of special
committees.

89. (1) The Commissioners at a meeting may, from time to time, by specific resolution, appoint a special committee to inquire into and report upon any matter (to be specified in such resolution) which may arise in connection with any of the powers, functions or duties of the Commissioners and which is not at the time under consideration by a standing committee constituted under section 86.

* (2) The provisions of sub-sections (3), (4) and (5) of section 86 shall be deemed to apply to every such special committee, which shall confine its enquiry to the matter specified in the resolution whereby it was constituted.

Appointment
of persons
other than
Commissioners
as members of
committees.

90. Notwithstanding anything contained in this Act, the Commissioners at a meeting may associate with any committee appointed under section 89 for such period as they may think fit any person of either sex who is not a Commissioner, but who may in the opinion of the Commissioners, possess special qualifications for serving on such committee and such persons shall have a right to vote at meetings of the special committee, and shall be deemed to be members thereof for all purpose for such period :

Provided that the number* of persons so appointed on any committee shall not exceed one-third of the whole number of the members of such committee.

¹See foot-note 3 on p. 85, ante.

²This proviso was inserted, by Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter III.—*The Municipal Authorities.*—Secs. 91, 92.)

Rules of Business.

91. The Commissioners at a meeting may, subject to the sanction of the ¹[Provincial Government], make rules as to—

Power to make rules as to business of Commissioners and committees.

- (a) the time of their meetings, the business to be transacted at meetings, and the period of notice of meetings and the manner in which such notice shall be given ;
- (b) the conduct and control of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings ;
- (c) the custody of the common seal ;
- (d) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned ;
- (e) the manner of appointment and the constitution of committees and the regulation and conduct of their business ; and
- (f) the delegation of powers or duties to committees or to the Chairman of a committee.

92. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

Validation of acts and proceedings.

- (a) the existence of any vacancy in or any defect in the constitution of, the municipality or any standing, joint or special committee or any disqualification in less than half of the Commissioners or members of the committee present when the act or proceeding was done or taken ;
- (b) any Commissioner having voted or taken part in any proceeding in contravention of the proviso to section 62 ; or
- (c) any defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Commissioners, or of any standing, joint or special committee, the minutes of the proceedings of which have been duly signed by the person presiding over the meeting shall be deemed to have been duly convened and when the minutes are confirmed at a subsequent meeting shall be deemed to be free from all defects and irregularity and the accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of the meeting.

¹See foot-note 3 on p. 85, ante.

(Chapter III.—The Municipal Authorities.—Chapter IV.—
Municipal Property and Finance.—Secs. 93—95.)

Administration Report.

Annual
administration
report.

93. (1) As soon as may be after the first day of April in every year and not later than such date as may be fixed by the ¹[Provincial Government], the Commissioners shall submit to the ¹[Provincial Government] a report on the administration of the municipality during the preceding year in such form and with such details as the ¹[Provincial Government] may direct. A copy of the report shall be submitted by the Commissioners to the District Magistrate.

(2) The report shall be published in such manner as the Commissioners at a meeting may direct.

CHAPTER IV.

Municipal Property and Finance.

I.—PROPERTY, CONTRACTS AND LIABILITIES.

Municipal property.

Commissioners
may acquire and
hold property
within or without
municipality.

94. The Commissioners of a municipality may acquire by gift, purchase or otherwise and hold property whether movable or immovable within or without the limits of the municipality.

Municipal
property.

95. (1) All property within the municipality of the nature hereinafter in this section specified, other than property maintained ²[by the Central or the Provincial Government] or another local authority, shall vest in and belong to the Commissioners, and shall, with all other property of whatsoever nature or kind which may become vested in the Commissioners, be under their direction, management and control, that is to say—

- (a) all public streets, including the soil, the pavements, stones and other materials thereof and all drains, bridges, culverts, trees, erections, materials, implements and other things provided for such streets;
- (b) all public channels, water courses, springs, tanks, ghats, reservoirs, ~~water~~sterns, wells, aqueducts, conduits, tunnels, pipes, pumps, and other water-works, whether made, laid or erected at the cost

¹See foot-note 3 on p. 85, ante.

²These words were substituted for the words "by Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Sec. 95.)

of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things, connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank :

Provided that water-pipes and any water-works connected therewith or appertaining thereto which with the consent of the Commissioners are laid or set up in any street by the owners of any mill, factory, dockyard, workshop or the like primarily for the use of their employees shall not be deemed to be public water-works by reason of their use by the public ;

- (c) all public sewers and drains, and all works, materials and things appertaining thereto and other conservancy works :

Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any such sewer or drain the subsoil appertaining thereto shall also be deemed to vest in the Commissioners :

Provided also that where any installation or work for the treatment or disposal of sewage is constructed by the owners of any mill, factory, dockyard, workshop or the like primarily for the use of their employees, the laying of sewers and other things appertaining thereto in a street, with the consent of the Commissioners, shall not by virtue of this clause or by reason of their use by the public cause such installation or sewers or works appertaining thereto to vest in the Commissioners ;

- (d) all sewage, rubbish and offensive matter deposited on streets or collected by the Commissioners from streets, latrines, urinals, sewers, cesspools and other places ;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ; and
- (f) all buildings erected by the Commissioners and all lands, buildings or other property transferred to the Commissioners ¹[by the Central or the Provincial Government] or acquired by gift, purchase or otherwise for local public purposes.

(2) The ²[Provincial Government] may, by notification, exclude any street, bridge, sewer or drain from the operation of this Act or of any specified section of this Act :

¹See foot-note 2 on p. 132, *ante*.

²See foot-note 3 on p. 85, *ante*.

In the proviso to sub-section (2) of section 95, for the words "without the consent" substitute the words "except after consideration of the views".

(Substituted by West Bengal Act XXVIII of 1951, section 9.)

[No. 48, dated the 1st April, 1952.]

(3) All property, movable or immovable, and all interest of any kind whatsoever, derived under any of the enactments specified in Schedule I, or otherwise, and vested in, or held in trust for, the late Commissioners under the Bengal Municipal Act, 1884, shall become vested in the Commissioners, and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

Ben. Act
III of
1884.

Transfer of
private streets,
etc., to Commis-
sioners.

96. The Commissioners at a meeting may agree with the person in whom the property in any street, bridge, tank, ghat, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing put up thereon or near thereto, that such street, bridge, tank, ghat, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein or the control thereof, as the case may be, shall vest in the Commissioners and such street, bridge, tank, ghat, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Transfer of
certain public
institutions to
the Commis-
sioners.

97. * (1) Any hospital, dispensary, school, library, museum, rest-house, ghat or market within a municipality, not being private property or the property of a religious institution or society, and all furniture and other articles appertaining thereto, not being such property, may, by order of the [Provincial Government] duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:

shall be published until one

Page 134—

Put an asterisk against the proviso to sub-section (1) of section 97 and insert the following footnote after footnote 2, namely:—

"In the application of the Act to the district of Darjeeling, in the proviso to sub-section (1) of section 97, after the word "Bengali" insert the words "and such other languages as the Provincial Government may by notification prescribe."

(Inserted by paragraph XI of notification No. 3435E.A., dated the 26th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter IV.—Municipal Property and Finance.—
Sec. 98.)

the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

(3) Sub-section (1) shall not apply to any hospital, dispensary, school, library, museum, rest-house, *ghat* or market which is vested in the Official Trustee of Bengal, or to any hospital, dispensary, school, library, museum, rest-house, *ghat* or market which is under the control of a properly constituted committee of management without the previous consent in writing of such committee of management.

Power to acquire property.

98. (1) When any land, whether within or without the limits of a municipality, is required— Acquisition of land.

- (a) for the purposes of this Act, or
- (b) for the recoupment of the cost or any portion of the cost of carrying out any such purpose,

I of 1894.

the ¹[Provincial Government] may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894.

(2) Before requesting the ¹[Provincial Government] to acquire land for the purposes referred to in clause (b) of sub-section (1) the Commissioners shall obtain previous sanction of the ¹[Provincial Government] and give due notice of their intention and an opportunity to any objector, who appears within such period as they may fix, to be heard in this connection.

(3) On payment by the Commissioners of the compensation awarded under the Land Acquisition Act, 1894, and of any other charges incurred in acquiring the land including costs, if any, incurred by the ¹[Provincial Government] in proceedings subsequent to acquisition concerning enhancement of the award for the land, the land shall vest in the Commissioners.

(4) The Commissioners shall be bound to pay to the ²[Provincial Government] the cost, including all charges and costs referred to in sub-section (3), of any land acquired for the Commissioners on their application under the provisions of sub-section (1).

¹See foot-note 3 on p. 85, *ante*.

²These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter IV.—Municipal Property and Finance.—
Sec. 99.)

Abandonment of acquisition.

Abandonment of
acquisition in
consideration
of special
payment.

99. (1) In any case in which the Commissioners propose to acquire any land for the recoupment of the cost of carrying out any of the purposes of this Act, the owner of the land or any person having an interest therein greater than a lease for years having seven years to run may make an application to the Commissioners requesting that the acquisition of the land be abandoned in consideration of the payment by such person of a fee to be fixed by the Commissioners in that behalf.

* (2) The Commissioners shall admit every such application if it reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making 1 of 1894. claims in reference to the land :

Provided that unless the application is made by all persons who have an interest in the land greater than a lease for years having seven years to run, the application shall not be deemed to be admitted unless the person applying undertakes to pay in one instalment the full fee payable under sub-section (3) and thereafter pays such fee.

Explanation.—A mortgagee shall not be deemed to be a person having an interest in the land greater than a lease for years having seven years to run.

(3) If the Commissioners decide to admit any such application they shall forthwith inform the Collector, and the Collector shall thereupon stay proceedings for the acquisition of the land for such period as the Commissioners may request and the Commissioners shall proceed to fix a fee in consideration of which the acquisition of the land may be abandoned.

(4) In fixing the fee to be paid in consideration of the abandonment of the acquisition of the land, the Commissioners shall, so far as to them appear to be practicable, fix a sum which in their opinion represents two-thirds of the increment in the value of the land which will in their opinion accrue to that land as a result of the improvements effected in the locality by the scheme for the purposes of which the acquisition has been sanctioned.

(5) Such fee shall be and remain a charge on the land, in respect of which it has been fixed, until the repayment thereof with interest in the manner hereinafter provided and shall be payable by the applicant on or before a date to be fixed by the Commissioners in this behalf; and such date shall not be less than four years from the publication of the notification under section 6 of the Land Acquisition Act, 1894,

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Sec. 100.)

nor shall such date be a date before that on which the scheme is declared by the Commissioners to be completed in so far as it affects such land.

(6) Before the date so fixed, the person from whom the Commissioners have arranged to accept the said fee, may, if the Commissioners are satisfied that the security offered by him is sufficient, execute an agreement with the Commissioners either—

- (i) to leave the said fee outstanding as a charge on his interest in the land subject to the payment in perpetuity of interest at a rate not exceeding seven *per cent. per annum*, the said interest to run from the date fixed under sub-section (5), or
- (ii) to pay the said fee by such number of equal yearly or half-yearly instalments of principal or of principal and interest, as may be approved by the Commissioners, interest in both cases being calculated at a rate not exceeding seven *per cent. per annum* on the amount outstanding.

(7) When the said fee has been paid on or before the date fixed under sub-section (5), or when an agreement has been executed in pursuance of sub-section (6) in respect of any land, the proceedings for the acquisition of land shall be deemed to be abandoned.

(8) If the said fee be not paid on or before the date fixed under sub-section (5), the Collector shall then proceed to acquire the land.

(9) If any sum payable under an agreement executed in pursuance of sub-section (6) be not paid on the date on which it is due, or on such later date as the Commissioners may in their discretion fix in this behalf, so much of the fee fixed by the Commissioners under sub-section (3) as is still unpaid, shall be payable on that date in addition to the said sum.

(10) At any time after an agreement has been executed in pursuance of clause (i) of sub-section (6) any person may pay off the balance outstanding of the charge created thereby with interest due, if any, at a rate not exceeding seven *per cent. per annum*, up to the date of such payment.

100. When an agreement has been executed by any person in pursuance of sub-section (6) of section 99 in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Commissioners (together with interest up to the date of realization, at a rate not exceeding seven *per cent. per annum*), under the provisions of this Act;

Recovery of money payable in pursuance of section 99.

and, if not so recovered, the Commissioners may, after giving public notice of their intention to do so, and not less

(Chapter IV.—Municipal Property and Finance.—
Secs. 101—103.)

than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Agreement or payment under section 99 not to bar acquisition under a fresh declaration.

101. If any land in respect of which an agreement has been executed, or a payment has been accepted in pursuance of sub-section (6) of section 99 be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 I of 1894. of the Land Acquisition Act, 1894.

Power to purchase, sell, lease or exchange.

Power to purchase, lease and sell lands.

102. The Commissioners at a meeting may purchases, take on lease or otherwise acquire any land for the purposes of this Act, and may sell, lease, exchange or otherwise dispose of any land not required for such purposes or which they have acquired for purposes of recoupment.

Contracts and liabilities.

Execution of contracts.

103. (1) The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

* (2) Every contract made on behalf of the Commissioners in respect of any sum exceeding two hundred rupees, or which shall involve a value exceeding two hundred rupees, shall be sanctioned by the Commissioners at a meeting and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners :

¹ Provided that in the case of a municipality the income of which during the preceding year was two and a half *lakhs* of rupees or more, the provisions of this sub-section shall apply as if the words " five hundred rupees " were substituted for the words " two hundred rupees ".

(3) Unless so executed, such contract shall not be binding on the Commissioners.

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(4) Where the Indian Registration Act, 1908, or any rule XVI of 1908.

Put an asterisk against sub-section (2) of section 103 and insert the following footnote after footnote 1, namely:—

*In the application of the Act to the district of Darjeeling, to sub-section (2) of section 103, add the following proviso, namely:—

"Provided that the Provincial Government, on the recommendation of the Commissioners, may, in its discretion, raise the limit of two hundred rupees as prescribed in this sub-section to a sum not exceeding five hundred rupees."

(Added by paragraph XII of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter IV.—Municipal Property and Finance.—
Secs. 104, 105.)

behalf of the Commissioners or is a document under which they claim, the act may, notwithstanding anything to the contrary contained in the aforesaid enactment or in any rule thereunder, be done by the Chairman, Vice-Chairman, Executive Officer, or Secretary of the municipality or by any other officer of the municipality empowered in this behalf by the Commissioners at a meeting.

104. (1) A person shall be—

Personal
liabilities of
Commissioners.

- (i) liable for the loss or waste of any money or other property belonging to or under the control of, the Commissioners, if such loss or waste is a direct consequence of his misconduct while Chairman, Vice-Chairman or Commissioner ; and
- (ii) liable for any expenditure made from the Municipal Fund contrary to law, where such illegal payment has been authorized by him while Chairman, Vice-Chairman or Commissioner, provided that the ¹[Provincial Government] may, ²* * for reasons to be stated in writing, condone any such illegal payment.

(2) In any such case of—

- (i) loss or waste, and
- (ii) misapplication where such misapplication has not been condoned by the ¹[Provincial Government]

a suit for compensation may be instituted by the Commissioners, in pursuance of a decision at a meeting.

Explanation.—The institution of a case which is found by the court by which the case is heard to be *mala fide* is misconduct within the meaning of clause (i) of sub-section (1).

II.—FINANCIAL PROVISIONS.

The Municipal Fund.

105. There shall be constituted for each municipality a fund to be called the Municipal Fund and there shall be placed to the credit thereof— Municipal Fund.

- (a) all sums received by or on behalf of the Commissioners under this Act or otherwise ;

3*

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¹See foot-note 3 on p. 85, *ante*.

²The words "in its discretion" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (b) was omitted, *ibid*.

[Ben. Act XV

(Chapter IV.—Municipal Property and Finance.—
Secs. 106—108.)

- (c) the balance, if any, standing at the credit of the Municipal Fund of the municipality at the commencement of this Act.

**Custody of
Municipal Fund.**

106. Unless the ¹[Provincial Government] otherwise directs, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality, to which they belong :

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the ¹[Provincial Government] or in fixed deposit in the Imperial Bank of India.

**Priority of pay-
ments on account
of loans, trusts,
establishment
and audit.**

107. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the Municipal Fund—

- (a) firstly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 ;
- (b) secondly, such sum as is required for the discharge of the liabilities and obligations arising from any trust legally imposed upon or accepted by the Commissioners ;
- (c) thirdly, such sums as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 70 ;
- (d) fourthly, such sum as the ¹[Provincial Government] may direct towards the cost of audit, towards the cost of establishment in any office of account or in any treasury and towards the salary and cost of establishment of any assessor or other special officer who may be appointed under this Act.

IX of
1914.**Purposes to
which Municipal
Fund is
applicable.**

108. (1) Subject to the charges specified in section 107, and subject to the payment of other sums, charges and costs necessary for carrying this Act into effect or duly directed or sanctioned for payment from the Municipal Fund by or under any of the provisions of this Act other than the provisions of this section or under any other enactment for

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Sec. 108.)

the time being in force, the Commissioners at a meeting may apply the Municipal Fund to any of the following purposes within the municipality, that is to say—

- (i) the construction, diversion, maintenance and improvement of streets, tramways, bridges, squares, gardens, tanks, *ghats*, wells, channels, drains, latrines and urinals ;
- (ii) the watering and cleansing of streets ;
- (iii) lighting ;
- (iv) water-supply ;
- (v) conservancy and drainage including out-fall works and sewage disposal ;
- (vi) the acquiring, keeping and equipping of open spaces for purposes of ventilation, or for the promotion of physical exercise and public recreation ;
- (vii) the planting and preservation of trees in streets and public places ;
- (viii) the construction, maintenance and improvement of offices and other buildings under the control of the Commissioners or required for municipal purposes ;
- (ix) the construction and maintenance of model dwelling houses for the working classes and for the poorer classes ;
- (x) the construction, establishment, maintenance and improvement of schools either wholly or by means of grants-in-aid ;
- (xi) the training of teachers and the establishment of scholarships ;
- (xii) the construction, establishment, maintenance and improvement of hospitals, dispensaries, leper asylums, orphanages, rescue houses, maternity houses, child welfare centres, *sarais*, poor-houses and *dharamsalas*, either wholly or by means of grants-in-aid ;
- (xiii) the employment of vaccinators and the promotion of vaccination ;
- (xiv) the training and employment of Health Officers, Sanitary Inspectors, ¹* medical practitioners, nurses, health visitors and midwives ;
- (xv) the prevention of the spread of dangerous diseases ;
- (xvi) regulating and abating offensive or dangerous trades and removing noxious vegetation ;

¹The word "female" was omitted by s. 16 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter IV.—Municipal Property and Finance.—Sec. 108.)

- (xvii) the payment of the expenses of indigent inhabitants of the municipality for journeys to and from any hospital established in any part of British India for the treatment of special diseases, and of their subsistence and proper clothing thereat, according to such scale as may be fixed by the Commissioners at a meeting ;
- (xviii) the construction, establishment, maintenance and improvement of veterinary dispensaries, and the training and employment of veterinary practitioners ;
- (xix) the improvement of the breed of cattle ;
- (xx) the payment of rewards for the destruction of noxious animals or diseased or unclaimed dogs ;
- (xxi) all acts and things which are necessary for carrying out the purposes of the Prevention of Cruelty to Animals Act, 1890, and the Bengal Cruelty to Animals Act, 1920 ;
- (xxii) the construction, establishment, maintenance and improvement of municipal markets of slaughter-houses or the taking of markets or slaughter-houses on lease ;
- (xxiii) the construction, establishment, maintenance and improvement of municipal dairy farms, grazing grounds and milk depots and all acts and things that may be necessary for the increase and improvement of the milk-supply ;
- (xxiv) the establishment and maintenance of public places for the disposal of the dead ;
- (xxv) the provision and maintenance of and assistance to public libraries and museums ;
- (xxvi) the establishment and maintenance of a fire-brigade ;
- (xxvii) the holding of fairs and industrial, sanitary and health exhibitions ;
- (xxviii) the taking of a census for the purposes of the municipality ;
- (xxix) the survey of buildings and lands and the preparation and maintenance from time to time of survey maps and plans and of other records relating to survey ;
- (xxx) the giving of relief, and the establishment of relief works, in time of famine, scarcity, or any natural calamity ;

XI of
1890.
Ben. Act I
of 1920.

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Sec. 109.)

- (xxxi) the disposal of unclaimed corpses and the burial or cremation of paupers, and the payment of contributions to charitable institutions for assisting in such disposal, burial or cremation ;
- (xxxii) the payment of compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act ;
- (xxxiii) the payment to an officer or servant of the Commissioners of a bonus for good work done, or of compensation, for loss incurred in the execution of his duty ;
- (xxxiv) the carrying on of propaganda for public health and educational purposes ;
- (xxxv) the re-excavation and repair of private tanks, wells and other sources of water-supply on such terms and conditions as to the Commissioners at a meeting may seem proper ; and
- (xxxvi) all acts and things which are necessary for carrying out the purposes of this Act, or which are likely to promote the safety, health, welfare or convenience of the inhabitants of the municipality, expenditure whereon may be declared by the Commissioners, with the sanction of the ¹[Provincial Government], to be an appropriate charge on the Municipal Fund.

(2) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

(3) Nothing in this section shall affect any obligation of the Commissioners arising from a trust legally imposed upon or accepted by them.

109. Notwithstanding anything contained in section 108, the Commissioners at a meeting may, with the sanction of the ¹[Provincial Government]—

Power to Commissioners to incur expenditure beyond the limits of the municipality.

(a) incur expenditure beyond the limits of the municipality—

- (i) in the acquisition of land, or
- (ii) in the construction, maintenance or repair of works,

for the purpose of obtaining a supply of water or of lighting required for the inhabitants of the

¹See foot-note 3 on p. 85, *ante*.

(Chapter IV.—Municipal Property and Finance.—Sec. 109.)

municipality, or for establishing places for the disposal of the dead or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of animals beyond the said limits or for drainage works or for dairy-farms and grazing-grounds or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said municipality ; or

- (b) make a contribution towards expenditure incurred by the Commissioners of any other municipality or incurred out of any public funds for any of the purposes mentioned in section 108 or for measures affecting the health, comfort or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality or towards the salary of any officer under any other authority whose services are employed by them ; or
- (c) create scholarships tenable outside the limits of the municipality :

Provided that nothing in this section, or in any other provision of this Act, shall be deemed to make it unlawful for the Commissioners of a municipality, when with such sanction as aforesaid they have constructed works beyond the limits of the said municipality for the supply of water or lighting or for drainage as aforesaid,—

- (a) to supply or extend to, or for the benefit of, any person or buildings or lands in any place, whether such place is or is not within the limits of the said municipality, any quantity of water or of gas or electric current not required for the purposes of this Act within the said municipality or the advantages afforded by the system of such drainage works, on such terms and conditions, with regard to payment and to the continuance of such supply or advantages as shall be settled by agreement between the Commissioners and such person or the owner or occupier of such buildings or lands ; or
- (b) to incur any expenditure, on such terms with :
to payment as may be settled as aforesaid, for the construction, maintenance, repair or alteration of any connection pipes, or other works necessary for the purpose of such supply or for the extension of such advantages.

[1932.]

Chapter IV.—Municipal Property and Finance.—Secs. 110, 111.)

110. The ¹[Provincial Government] or any local authority may, at any time with the consent of the Commissioners, transfer to them the management of any institution or the execution of any work not provided for by this Act and it shall thereupon be lawful to the Commissioners to undertake the management of such institution or the execution of such works :

Objects not provided for by this Act.

Provided that in every such case the funds necessary for such management or execution shall be placed at their disposal by the ¹[Provincial Government] or by the local authority concerned.

111. Notwithstanding anything contained in section 108—

Restriction on application of moneys received for certain purposes.

(1) all moneys collected, received or recovered by the Commissioners, whether as taxes^{2**} or for the execution of works, for or in any respect relating to—

- (i) the water-supply ;
- (ii) the lighting system ;
- (iii) the cleansing of private latrines, urinals and cess-pools and conservancy ;

shall, after deduction of such proportionate share of the cost of collection and supervision as the Commissioners at a meeting may fix, be applied in defraying the expenses respectively—

- (a) of making, extending or maintaining the water-supply,
- (b) of making, extending or maintaining the lighting system,
- (c) of cleansing latrines, urinals and cesspools and of conservancy,

as the case may be, and in repaying or paying interest on debts incurred in connection with the said purposes :

Provided that the ¹[Provincial Government] may at any time on the request of the Commissioners authorize the expenditure of surplus moneys accrued in respect of any of the services mentioned in sub-clauses (i), (ii) and (iii) of this clause on any other of the services mentioned in those sub-clauses or for general purposes :

¹See foot-note 3 on p. 85, ante.

²The words "or fines" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XV]

(Chapter IV.—Municipal Property and Finance.—Secs. 112—113A.)

Provided also that before authorizing such expenditure the ¹[Provincial Government] shall give an opportunity for the submission of any objection to such expenditure by any rate-payer in the municipality and shall consider such objection ; and

(2) money which has been received by the Commissioners on account of any hospital or dispensary, or for any other specified purpose, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary or any other specified purpose shall not, except as provided in clause (1), be expended on any other object.

The Budget.

Annual estimates to be prepared.

²112. At least two months before the close of the year, the Commissioners shall have prepared a complete account of the actual and expected receipts and expenditure for that year together with a budget estimate of the income and expenditure of the municipality for the next year.

Accounts and estimates to be published.

113. Copies of the accounts and estimates referred to in ³section 112 and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any person paying municipal rates, tolls, fees or taxes to such municipality who may desire to inspect the same.

Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration ⁴[at the special meeting referred to in sub-section (1) of section 113A.]

Accounts, estimates and suggestions to be laid before the Commissioners.

⁵113A. (1) The accounts and estimates referred to in section 112, together with any written suggestion deposited under section 113, shall be laid before the Commissioners at a meeting specially convened for the purpose at least one month before the close of the year.

¹See foot-note 3 on p. 85, *ante*.

²Section 112 was substituted for the original section 112 by s. 17 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³The words "sub-section (1) of" were omitted by s. 18(1), *ibid*.

⁴These words, figures and letter were substituted for the words "at the next meeting" by s. 18(2), *ibid*.

⁵Section 113A was inserted by s. 19, *ibid*.

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Secs. 114—117.)

(2) Subject to the provisions of section 116, the Commissioners shall, at such meeting, decide upon the appropriations and the ways and means contained in the budget estimate and, by resolution, sanction a budget which shall be submitted to the ¹[Provincial Government] or to such officer or officers as the ¹[Provincial Government] may, by order, direct in this behalf.

(3) Subject to the like provisions, the Commissioners may vary or alter from time to time, as circumstances may render desirable, by special resolution, the budget sanctioned under sub-section (2).

114. As soon as may be after the first day of October, a revised budget for the year shall be framed and such revised budget shall, so far as may be, be subject to all the provisions applicable to a budget made under ²[sections 112, 113 and 113A.]

The revised budget.

115. In framing a budget the Commissioners shall provide for the maintenance of such minimum closing balance (if any) as the ¹[Provincial Government] may, by order, prescribe, for the service of municipal loans and for carrying out any duty or obligation specifically imposed upon them under this Act or any other enactment.

Minimum closing balance shown in budget.

116. Where, in the opinion of the ¹[Provincial Government], the condition of indebtedness of any municipality is such as to make the control of Government over its budget desirable, the ¹[Provincial Government] may, by order declaring that such is the case, direct that the budget of such municipality shall be subject to the sanction of the ¹[Provincial Government] or of the officer to whom it is to be submitted under the provisions of sub-section (2) of ³[section 113A], as the case may be, and that the power to vary or alter the budget under sub-section (3) of ³[section 113A] shall be subject to conditions to be prescribed by rule.

Budgets of indebted boards.

117. (1) Where a budget has been passed the Commissioners shall not incur any expenditure under any of the heads of the budget, other than a head providing for the refund of taxes, in excess of the amount passed under that head without making provision for such excess by the variation or alteration of the budget.

Prohibition of expenditure in excess of budget.

¹See foot-note 3 on p. 85, *ante*.

²These words, figures and letter were substituted for the word and figures "section 112" by s. 20 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³This word, figure and letter were substituted for the word and figure "section 112" by s. 21, *ibid*.

[Ben. Act XV]

(Chapter IV.—Municipal Property and Finance.—Secs. 118—120.)

(2) Where any expenditure under any head providing for the refund of taxes is incurred, the following explanation, namely:—

Page 148—

To section 118, add the following explanation, namely:—

“Explanation.—Nothing in this section shall apply to the purchase of a motor vehicle the price of which does not exceed fifteen thousand rupees.”

(Added by West Bengal Act XXVIII of 1951, section 10.)

[No. 48, dated the 1st April, 1952.]

—such form as it may prescribe, for its approval, or for the approval of such officer.

Power of
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thousand
rupees.

III.—GENERAL.

Disposal of Municipal Fund and property, on division, union, withdrawal or revision of boundaries of municipalities.

Apportionment
and disposal of
municipal
property upon
a division or
union of
municipalities.

119. When two or more municipalities are united or a municipality is divided or the boundaries of two or more municipalities are revised by a notification under section 8, the Municipal Funds or Fund and all property vested in the Commissioners of the municipalities or municipality concerned shall be consolidated, or apportioned in such manner as the [Provincial Government] may direct.

Pages 148 and 332—

In sections 120 and 554 for the words “His Majesty for the purposes of the Province” substitute the words “the State Government”.

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

the publication of such scheme in the [Official Gazette] such property and liability shall vest and be apportioned accordingly.

¹See foot-note 3 on p. 85, ante.

²These words were substituted for the words “officer of Government” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “the benefit of the inhabitants of the local area”, *ibid.*

⁴These words were substituted for the words “Secretary of State for India in Council”, *ibid.*

⁵See foot-note 1 on p. 89, ante.

of 1932.]

(Chapter IV.—Municipal Property and Finance.—Secs. 121, 122.)

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification under clause (b) of section 8, the balance of the Municipal Fund and all other property at the time of the publication of the notification vested in the Commissioners shall vest in His Majesty ¹[for the purposes of the Province] and the liabilities of the Commissioners shall be transferred to the ²[Provincial Government].

(3) Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Audit.

121. (1) The accounts of Municipal Funds shall be audited at such times as the ³[Provincial Government] may prescribe. Audit of accounts.

(2) The appointment of auditors of the accounts of Municipal Funds shall be made by the ³[Provincial Government] and such auditors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

(3) The ³[Provincial Government] may direct that the whole or any portion of the cost of audit as determined by it including the salary of the auditor, shall be paid from the Municipal Fund within such time as it may fix.

Rules as to the Municipal Fund and property.

122. The ³[Provincial Government] may make rules— Power to make rules.

- (a) to regulate the application of the Municipal Fund to the purposes to which it is applicable ;
- (b) to regulate the keeping, checking and publication of accounts and the periodical audit thereof ;
- (c) to regulate the preparation of the budget estimate and the expenditure of money for purposes provided therein ;
- (d) to provide for the retention of adequate working and closing balances ;
- (e) to provide for the preparation of plans and estimates for works referred to in section 118 to be partly or wholly constructed at the expense of the

¹These words were inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on p. 64, ante.

³See foot-note 3 on p. 85, ante.

(Chapter V.—Municipal Taxation.—Sec. 123.)

- Commissioners, and to determine the persons by whom, and the conditions subject to which, such plans and estimates are to be sanctioned ;
- (f) to regulate the preparation, submission and publication of returns, statements and reports by the Commissioners, and to prescribe registers and forms ; and
- (g) to determine the persons by whom orders for payment of money from the Municipal Fund may be signed, how such payments shall be made and by whom receipts may be given.

CHAPTER V.**Municipal Taxation.***Imposition of taxes.*

Power to
impose taxes.

123. (1) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, subject to the provisions of this Act, impose within the limits of the municipality the following rates, taxes, tolls and fees, or any of them :—

- (a) a rate on holdings situated within the municipality assessed on their annual value ;
- (b) a water-rate on the annual value of holdings ;
- (c) a lighting-rate on the annual value of holdings ;
- (d) a conservancy, latrine and drainage rate (hereafter known as the conservancy-rate) on the annual value of holdings ;
- (e) a tax on carriages and on horses and other animals mentioned in Schedule III ;
- (f) a tax on the trades, professions and callings specified in Schedule IV at such rates as may be fixed by the Commissioners within the maximum rates fixed in the said schedule ;
- (g) a fee on the registration of carts ;
- (h) tolls on ferries and on bridges ;
- (i) a fee on vessels moored within the limits of the municipality at wharfs or landing places constructed and maintained by the Commissioners ; and
- (j) any other tax which the Commissioners are empowered to impose under any law for the time being in force.

of 1932.]

Page 151—

After section 123, insert the following section, namely:—

123A. The State Government may, by order, exempt from the payment of any rate, tax, toll or fee payable under the provisions of this Act, any diplomatic or consular mission of a foreign State and the diplomatic and consular officers of such mission."

(Inserted by West Bengal Act XXVIII of 1951, section 11.) otions on
position
tax on
gs.
[No. 48, dated the 1st April, 1952.]

centum, on the annual value of holdings ;

(b) on any holding which is used exclusively as a place of worship to which the public have the right of free access without payment or as a mortuary or which is duly registered as a public burial or burning ground under this Act.

(2) The Commissioners at a meeting may, either wholly or partially, exempt from the rate on holdings any holding which is used exclusively for purposes of public charity.

(3) Where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed six rupees, the rate on holdings shall not be imposed on any of the holdings of the said owner.

(4) The ¹[Provincial Government] may, on the recommendation of the Commissioners, at any time, include in, or exclude from, Schedule V the name of any municipality.

125. (1) The imposition of a water-rate or of a lighting-rate shall be subject to the following restrictions, namely,—

Restrictions on
the imposition
of the water
and lighting
rates.

(a) that the rate shall be imposed only on holding within an area for the supply of water to which or for the lighting of which, as the case may be, a scheme involving the laying of pipes, wires, cables or other similar apparatus has been sanctioned by the ¹[Provincial Government] :

Provided that where the Commissioners—

(i) distribute water by means of water-carts or other like agency or provide a water-supply, approved by the ¹[Provincial Government], by means of wells or tanks or other reservoirs, or

¹See foot-note 3 on p. 85, ante.

(Chapter V.—Municipal Taxation.—Sec. 126.)

(ii) provide acetylene lamps, or such other means of lighting as may be approved by the ¹[Provincial Government] ;

the Commissioners at a meeting may impose in case (i) a water-rate and in case (ii) a lighting-rate under such conditions and limitations as may be prescribed by the ¹[Provincial Government] ;

- (b) that the rate shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or, in the case of the water-rate on any holding, no part of which is within a radius, to be fixed by Commissioners at a meeting, from the nearest standpipe or other supply of water available to the public ;
- (c) that the water-rate shall not be levied at more than seven-and-a-half *per centum*, and the lighting-rate at more than three *per centum*, on the annual value of holdings ;
- (d) that the rate shall not be leviable until a supply of water has been provided in the area to be supplied, or until the lamps in the area to be lighted have been lighted, as the case may be.

(2) Nothing in this section shall prevent the Commissioners at a meeting from making any special arrangement consistent with this Act for a supply of water or electric current or gas to persons residing beyond the radius fixed by the Commissioners at a meeting and for the levy of charges for the same.

(3) With the sanction of the Commissioners at a meeting the amount of the water-rate may vary with the distance of holdings from the nearest standpipe or other sources of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises.

Restrictions on the imposition of the conservancy rate.

126. (1) The imposition of the conservancy-rate shall be subject to the following restrictions, namely,—

- (a) that where there is no underground sewerage system the rate on any jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of latrines, urinals and cesspools therein shall not exceed such proportion of the rate in force for the municipality as the ¹[Provincial Government] may fix ;

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

Page 153—

In section 126—

(a) *in clause (c) of sub-section (1) for the words “seven per centum” substitute the words “ten per centum”, and*

(b) *after sub-section (1) insert the following sub-section, namely:—*

“(1A) A rebate of twenty-five *per centum* of the conservancy-rate levied on a holding shall be allowed if the holding is provided with one or more sanitary-type latrines and with no service-privy or service-urinal.”.

(Substituted and Inserted by West Bengal Act XXVIII of 1951, section 12.)

[No. 48, dated the 1st April, 1952.]

living within or habitually resorting to such premises or places.

(3) Notwithstanding anything contained in this section any person otherwise liable to pay the rate on any railway premises or on any premises used as a mill, factory dockyard, workshop, *coolty*-depot, school, hospital, market court-house or other similar place may, from year to year by application to the Commissioners, require that the rate shall be levied on such premises at a percentage not exceeding one-fourth of the percentage fixed under sub-section (1), provided that he proves to the satisfaction of the Commissioners that all latrines and urinals on such premises are served, cleansed and kept in a satisfactory condition by an establishment maintained at his own cost, and that the sewage therefrom undergoes such treatment at his cost, by means of septic tanks or other similar works constructed to the satisfaction of the Commissioners, as to render the effluent innocuous and inoffensive and capable of being discharged into the municipal drains, and the Commissioners shall levy such rate accordingly :

¹Provided that the exemption from paying the full rate conferred under this sub-section—

(i) shall not apply where the Commissioners have, before the conservancy arrangements referred to in this sub-section were made, provided an underground sewerage system which is, in the opinion of the ²[Provincial Government], of sufficient capacity

¹This proviso was substituted for the original proviso by s. 22 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 3 on p. 85, *ante*.

(Chapter V.—Municipal Taxation.—Secs. 127, 128.)

and in every respect adequate for the efficient treatment and disposal of all sewage in the area served by it ;

(ii) shall, where the Commissioners have, after the conservancy arrangements referred to in this sub-section were made, provided an underground sewerage system which, in the opinion of the ¹[Provincial Government], fulfils the requirements specified in clause (i), terminate after a term of years to be determined by the ¹[Provincial Government] in each case ;

(iii) may, subject to the approval of the ¹[Provincial Government], be granted by the Commissioners at a meeting to a mill, factory, dockyard, workshop, *coolly*-depot, school, hospital, market, court-house or other similar place which contributes or has contributed towards the construction of an underground sewerage system.

Power to call for list of occupants of holdings.

127. The Commissioners may, for the purposes of conservancy, or for the levy of the conservancy-rate, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a true and correct list of the number of persons living within, or habitually resorting to, such holding.

Assessment of rates on the annual value of holdings.

Annual value of holdings.

128. (1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let.

(2) If such gross annual rental cannot, in the opinion of the assessor, be easily estimated or ascertained, the annual

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In the proviso to sub-section (2) of section 128,—

(a) for the words "one lakh" in the two places where they occur, substitute the words "three lakhs", and

(b) for the word "one-fourth" substitute the word "one-half".

(Substituted by West Bengal Act XXVIII of 1951, section 13.)

[No. 48, dated the 1st April, 1952.]

*These words were substituted for the words "one-fourth" in section 128 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

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(Chapter V.—Municipal Taxation.—Secs. 129, 130.)

(3) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

129. For the purpose of, and subject to, clause (21) of section 3—

Power of Commissioners to decide questions arising out of the definition of "holding".

- (a) if a question arises whether any land is included within one holding, the decision thereof shall rest with the Commissioners at a meeting ;
- (b) the Commissioners at a meeting shall determine what class of ownership shall be accepted as the test for determining whether lands within a municipality are held under one title or agreement.

130. If, during the currency of any period prescribed by sub-section (1) of section 137, the ownership of any land or building, or portion thereof is subdivided into separate shares, the Commissioners may on the application of any of the co-owners, after giving the other co-owners an opportunity to be heard, divide the assessment of such land, building or portion in the following manner, namely :—

Assessment in case of land or building subdivided into separate shares.

- (i) if the ownership be subdivided into two or more shares without separate allotments, or if as the result of such subdivision there is a separate allotment of such land, building or portion into two or more separate portions, which are not entirely independent, the Commissioners may, if they think fit, apportion the assessment among the shareholders according to the value of their respective shares without assigning any separate number ;
- (ii) if, as the result of such subdivision, there are separate allotments of such land, building or portion and, if such allotments are made entirely independent and capable of separate enjoyment but not in conformity with the provisions of this Act or of any rules or by-laws made thereunder relating to buildings, the Commissioners may, if they think fit, assess such portions separately after assigning to them separate numbers :

Provided that by such separate assessment the total assessment for the entire premises shall not be increased ;

- (iii) if such separated portions of such land, building or portion are, or are made, entirely independent and capable of separate enjoyment in conformity with the provisions of this Act or of any rules or

(Chapter V.—Municipal Taxation.—Secs. 131—134.)

by-laws made thereunder, relating to buildings, the Commissioners shall assess each portion separately by assigning a separate number thereto :

Provided that by such separate assessment the total assessment for the entire premises shall not be increased :

Provided also that such apportionment or separation of the numbers and assessment, as the case may be, shall remain in force and the rate shall be levied accordingly until the expiration of the said period.

Assessment in case of land or building being amalgamated.

131. If any land or building, bearing two or more municipal numbers, or portions thereof, be amalgamated into one or more new premises, the Commissioners shall assess them on amalgamation after assigning to them one or more numbers, as the case may be :

Provided that no assessment on amalgamation of premises shall be made by the Commissioners unless there is a cause for the revaluation of any such premises except on an application being made to them by the owner or owners thereof in which case such assessment, if made, shall remain in force for the unexpired period of valuation :

Provided also that the total assessment on amalgamation shall not be greater than the sum of the previous assessments of the several premises amalgamated.

Taxes by whom payable.

132. Except as otherwise provided by this Act, any rate which is assessed on the annual value of a holding shall be payable by the owner of the holding.

Preparation of valuation list.

133. When it has been decided to impose any rate to be assessed on the annual value of holdings, the assessor, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality in the manner provided in this chapter, and shall enter such value in a valuation list.

Returns required for ascertaining annual value.

134. The assessor, in order to prepare the valuation list, may, whenever he thinks fit, by notice require the owners or occupiers of all holdings to furnish him within one week with true and correct returns of the rent or annual value thereof and a true and correct description of the holdings containing such particulars as the assessor may direct, and the assessor, or any person authorized by him in writing in that behalf, may enter, inspect and measure any such holding at any time between sunrise and sunset :

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(Chapter V.—Municipal Taxation.—Secs. 135, 136.)

Provided that at least twenty-four hours' previous notice of the intention to enter, inspect and measure any holding shall be given to the occupier thereof, unless he waives his right to such notice.

135. Subject to the provisions of this Act, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which any rate on the annual value of holdings shall be levied, and the percentage so fixed shall remain in force until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year :

Determination
of percentage of
rate on holdings.

Provided that, when this Act is first extended to any place, the first rate or rates shall be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting :

Provided further that, where the amount standing to the credit of the Commissioners in the Municipal Fund in any municipality is, in the opinion of the '[Provincial Government], insufficient to meet the liabilities of the Commissioners, no decrease shall be made in the percentage of any rate levied by them without the previous sanction of the '[Provincial Government.]

136. As soon as possible after the percentage at which the rate or rates shall be levied for the next year has been determined under section 135, the Commissioners shall cause to be prepared ^{2*} * * an assessment list, which shall contain the following particulars and any others which the Commissioners may think proper to include :—

Preparation of
assessment list.

- (a) the name of the street in which the holding is situated ;
- (b) the number of the holding on the register ;
- (c) a description of the holding ;
- (d) the annual value of the holding ;
- (e) the name of the owner ^{3*} * ;
- (f) the amount of rate payable for the year (each rate to be shown separately) ;
- (g) the amount of quarterly instalment ;
- (h) if the holding is exempted from assessment, a note to that effect.

¹See foot-note 3 on p. 85, *ante*.

²The words " by the assessor " were omitted by s. 24(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³The words " and occupier " were omitted by s. 24(2), *ibid*.

(Chapter V.—Municipal Taxation.—Secs. 137, 138.)

Revision and
duration of the
list.

137. (1) A new valuation ^{1*} * list shall unless otherwise ordered by the ²[Provincial Government] be prepared, in the same manner as the ³[original list,] once in every five years.

(2) Subject to any alteration or amendment made under section 138 and to the result of any application under section 148 every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and

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In sub-section (1) of section 138, in line 2, for the word "term" substitute the word "time".

(The word "term" is a printing mistake for the word "time" which is now rectified, *vide* Ben. Act XV of 1932 as published in the *Calcutta Gazette*, dated the 1st December, 1932, Part III, page 127).

[No. 51, dated the 26th August, 1953.]

- (d) by re-valuing or re-assessing any holding, the value of which has been increased by additions or alterations to buildings ; or
- (e) where the percentage on the annual value at which any rate is to be levied has been altered by the Commissioners under the provisions of section 135, by making a corresponding alteration in the amount of rate payable in each case ; or
- (f) by reducing, upon the application of the owner ^{5*} * the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has been diminished from any cause beyond the control of the owner ^{5*} * the operation of which could not have been prevented with due precaution ; or
- (g) by correcting any clerical or arithmetical error.

¹The words "and assessment" were omitted by s. 25(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 3 on p. 85, *ante*.

³These words were substituted for the words "original lists" by s. 25(2), *ibid*.

⁴The words "or occupier" and "or occupation" were omitted by s. 26(1)(a), *ibid*.

⁵The words "or occupier" were omitted by s. 26(1) (b), *ibid*.

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(Chapter V.—Municipal Taxation.—Secs. 139—141.)

(2) The Commissioners shall give at least one month's notice to any person interested of any alteration which the Commissioners propose to make under clauses (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration will be made.

(3) The provisions of sections 148 to 151 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be signed by the Chairman, ¹[Vice-Chairman or Secretary,] and subject to the result of an application under section 148, shall take effect from the beginning of the quarter next following that in which the alteration was made, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list.

139. An entry in an assessment list shall be conclusive proof—

Conclusiveness
of entries in list.

- (a) for any purpose connected with a rate or rates to which the list refers, of the amount leviable in respect of any holding during the period to which the list relates, and
- (b) for the purpose of assessing any other municipal rate, of the annual value of any holding during the said period.

140. (1) If any house belongs to one owner and the land on which it stands as also the adjacent land if any, usually occupied therewith, belongs to another, the Commissioners may treat such house and land as a single holding and assess them to rates accordingly.

Power to assess
building and
lands together
where land is let
on a building
lease.

(2) The total amount of the rate or rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate or rates so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

(3) In case of dispute the Commissioners shall determine what amount the owners of the house and of the land shall pay respectively.

141. Whenever, from the circumstances of the case, the levy of a rate or rates on any holding in the municipality would be productive of excessive hardship to the person

Power to
reduce rates in
cases of excessive
hardship.

¹These words were substituted for the words "or Vice-Chairman" by s. 26 (2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter V.—Municipal Taxation.—Sec. 142.)

liable to pay the same, the Commissioners at a meeting may
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In section 142,—

(a) in sub-section (1)—

(i) after the word "holding" insert the words "comprising of land and building"; and

Remission
 refund on
 account of
 vacant h

(ii) for the word "three-quarters" substitute the word "one-half"; and

(b) in sub-section (2) for the word "three-fourths" substitute the word "one-half".

(Inserted and substituted by West Bengal Act XXVIII of 1951, section 14.)

[No. 48, dated the 1st April, 1952.]

by and that the application for remission or refund is made within six months from the date on which such notice is delivered at the office of the Commissioners ; and

(ii) the amount of rate or rates to be remitted or refunded shall not be calculated from any date prior to the date of delivery of such notice.

(2) When any such holding as aforesaid consists of separate tenements, one or more of which has, or have been unoccupied and unproductive of rent for any period of not less than sixty consecutive days, the Commissioners may, subject to the proviso to sub-section (1), remit such portion (if any) of the rate or rates, not exceeding three-fourths, as they may think equitable.

(3) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

(4) For the purposes of this section—

(i) neither the presence of a caretaker nor the mere storing in one room of an otherwise unoccupied dwelling-house of the furniture habitually used in it shall constitute occupation of the house, unless such house is maintained as a pleasure resort or as a temporary place of residence for a person ordinarily residing elsewhere, and

(ii) a house shall be deemed productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

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(Chapter V.—Municipal Taxation.—Secs. 143—145.)

143. Every person who is the owner of any holding for which a remission or refund of the rate or rates has been made under section 142, shall give notice of the re-occupation of such holding within ten days of such re-occupation.

Owner to give notice of re-occupation.

144. (1) Whenever the title to or over any land or building of any person primarily liable for the payment of rates on such property is transferred, both the transferor and the transferee shall, within three months of the registration of the deed of transfer, if it be registered, or if it be not registered, within three months of its execution, or, if no instrument be executed, within three months of the actual transfer, give notice in writing of such transfer to the Chairman.

Notice to be given to the Chairman of all transfers of title of persons primarily liable to payment of rates.

(2) Every person primarily liable for the payment of rates on any land or building, who transfers his title to or over such property, without giving notice of such transfer to the Chairman, as aforesaid, shall, unless the Commissioners, on grounds of hardship arising out of special circumstances, otherwise direct, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all such rates from time to time payable in respect of the said property until he gives such notice, or until the transfer shall have been recorded in the municipal books.

(3) Nothing in this section shall be held to diminish the liability of the transferee for the said rates or to affect the prior claim of the Commissioners for the recovery of the rates due thereupon and the Commissioners may revise the assessment list as against the transferee with effect from the date on which they are satisfied that the transfer was made.

144A. Every person succeeding to any land or building by inheritance shall within three months from the date of such succession give notice in writing of such succession to the Chairman and the provisions of sub-section (3) of section 144 shall apply *mutatis mutandis* to such a case.

Persons succeeding to lands or buildings to give notice to the Chairman.

General provisions relating to assessment.

145. (1) The ²[Provincial Government] shall prepare a list of persons qualified in its opinion to be appointed as municipal assessors.

Appointment of assessors of municipal rates.

(2) When a new valuation ³* * * list is to be prepared for any municipality the Commissioners at a meeting shall appoint from the list referred to in

¹Section 144A was inserted by s. 27 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 3 on p. 85, *ante*.

³The words "and assessment" were omitted by s. 28 (1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter V.—Municipal Taxation.—Secs. 146, 147.)

sub-section (1) a person ¹* * * as an assessor for the purposes of this chapter, on such salary and with such establishment as may be fixed by them with the approval of the ²[Provincial Government].

(3) Notwithstanding anything in this section the ²[Provincial Government] may, ³* * *, at the request of the Commissioners at a meeting, appoint, or authorise the Commissioners at a meeting to appoint, any person or persons approved by the ²[Provincial Government] with or without salary to prepare the valuation ⁴* * * list of such municipality.

Appointment of
assessor by
Provincial
Government in
case of default.

146. (1) If the Commissioners fail to comply with the provisions of section 145 within such period as the ²[Provincial Government] may fix, the ²[Provincial Government] may appoint for such period as may be necessary a suitable person from among the persons included in the said list to prepare the valuation ⁵* * * list of such municipality.

(2) If there is no person for the time being available for appointment as assessor from among the persons included in the list referred to in sub-section (1) of section 145, the Commissioners at a meeting, or in case of default by the Commissioners, the ²[Provincial Government], may appoint any person approved by the ²[Provincial Government] on such salary, for such period, and with such establishment as the Commissioners with the approval of the ²[Provincial Government], or the ²[Provincial Government] in the case of default, may determine.

(3) An assessor appointed by the ²[Provincial Government] under this section shall be paid monthly out of the Municipal Fund such salary and cost of establishment as may be fixed by the ²[Provincial Government].

Publication of
notice of
assessments.

147. (1) When the assessment list mentioned in section 136 has been prepared or revised, the Chairman shall sign the same and shall cause it to be deposited in the office of the Commissioners, and shall give public notice of the place where the list may be inspected.

(2) In all cases in which any property is for the first time assessed or the assessment is increased, the Chairman shall also give notice thereof to the owner or occupier of the property, if known.

¹The words "conversant with local conditions" were omitted by s. 28 (2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

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(Chapter V.—Municipal Taxation.—Secs. 148—151.)

148. (1) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation or to exempt him from the assessment of rate. Application for review.

(2) No such application shall be received after one month from the date of publication of the notice required under sub-section (1) of section 147, or the service of the notice required under sub-section (2) of that section or after the expiration of one month from the date of the notice.

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For sub-section (1) of section 149, substitute the following sub-section, namely:—

“(1) Every application presented under section 148 shall be heard and determined by a Committee consisting of the Chairman and not less than two and not more than four Commissioners appointed by the Commissioners at a meeting: hearing and determination of applications by committee.

Provided that in the case of a municipality which is divided into wards under section 20, no Commissioner of the ward from which the application is made shall take part in the hearing or determination of such application.”

(Substituted by West Bengal Act XXVIII of 1951, section 15.)

[No. 48, dated the 1st April, 1952.]

at a meeting.

³(4) The decision in such cases of the Committee, or of a majority of the members present, shall be final.

³(5) In case of equality of votes, the person presiding shall have a second or casting vote.

150. No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided.

Assessment to be questioned only under Act.

151. (1) When an objection to an assessment or valuation has been made under section 148 the rate shall, pending the final determination of the objection, be paid on the previous assessment or valuation.

Payment of rate how affected by objections to valuation.

¹Sub-section (3) was omitted by s. 30 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²These words were substituted for the word “two” by s. 31(1), *ibid.*

³Sub-sections (3), (4) and (5) were substituted for the original sub-section (3) by s. 31(2), *ibid.*

(Chapter V.—Municipal Taxation.—Secs. 152—155.)

(2) If, when the objection has been finally determined, the previous assessment or valuation is altered, then—

- (a) any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Commissioners under this Act ; and
- (b) any deficiency shall be deemed to be an arrear of the rate and recoverable as such.

Recovery of taxes.

Office hours for
payment of taxes.

152. By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

Amount of tax
payable, and tax
to be paid in
advance.

153. (1) Unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act, the amount entered in the lists the notice relating to which is published under section 147, shall be deemed to be the amount due from any person on account of any rate on the annual value of holdings. In case of such subsequent alteration the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

(2) Such rate shall be payable in quarterly instalments and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable.

Receipts to be
given.

154. For all sums paid on account of any tax, toll, fee or rate under this Act a receipt stating the amount and the tax, toll, fee or rate on account of which it is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

Bill and notice
of demand to be
presented.

155. (1) Within three months after any sum has become due on account of any tax, toll, fee or rate the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax, toll, fee or rate on account of which the charge is made.

(2) If the amount mentioned in such bill is not paid on presentation thereof, a notice of demand in the prescribed form with copy of the bill appended thereto, shall be served on the person liable to pay the same. Such notice of demand may be served at any time after the presentation of the bill :

Provided that no charge shall be made in respect of the service of such notice.

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(Chapter V.—Municipal Taxation.—Secs. 156, 157.)

(3) Such notice shall be signed by the Chairman, Vice-Chairman or an officer authorized by the Commissioners in that behalf, and shall be served by a person authorized to receive payment.

156. If any person, after service upon him of such bill and notice, does not, within fifteen days of the service of such notice, pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs according to the prescribed scale of fees, may, at any time within one year after the date of service of the said notice, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any movable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax, toll, fee or rate :

Levy by distress on failure to pay tax, toll, fee or rate.

Provided that, when the holding in respect of which the default is committed is a place of business and the movable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released :

Provided also that, if the said property or any part thereof belongs to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

157. (1) Every warrant of distress and sale under section 156 shall be issued by the Commissioners, and shall be in the prescribed form.

Distress how to be made.

(2) When a warrant of distress is issued it shall not be discharged before it is executed except upon payment of the sum due together with one-fourth of the costs referred to in section 156.

(3) Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

(4) Such officer shall make in the presence of two witnesses an inventory of all movable property seized under the warrant and shall give not less than ten days' previous notice of the sale, and of the time and place thereof by beat of drum, in the municipality or ward in which the property is seized, and by serving on the defaulter a notice in the prescribed form :

(Chapter V.—Municipal Taxation.—Secs. 158—161.)

Provided that if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

Officer may
break open
door.

158. The officer charged with the execution of the warrant may, under the special order of the Chairman or Vice-Chairman, between sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that he shall not enter or break open the door of any room appropriated to women, except after reasonable notice and opportunity given to enable the women to remove to some part of the premises where their privacy may be preserved.

Sale how to be
conducted.

159. (1) If the sum due be not paid with costs before the time fixed for the sale, or if the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

(2) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

(3) The tax-collector or other officer authorized by the Commissioners in that behalf shall make a return of all such sales to the Commissioners in the prescribed form.

Sale of property
beyond limits of
municipality.

160. If the Commissioners are unable to recover under section 159 the sum due with costs, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within Bengal, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

Commissioners
to keep account
of distresses and

161. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes, tolls, fees and rates under this Act.

of 1932.]

(Chapter V.—Municipal Taxation.—Secs. 162—167.)

162. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, toll, fee or rate the Commissioners may sue the person liable to pay the same in any court of competent jurisdiction.

Power to Commissioners to bring suits in place of distress.

163. The Commissioners may order to be struck off the books the amount of any tax, toll, fee, rate or other money due under this Act which may appear to them to be irrecoverable.

Irrecoverable taxes.

164. All Commissioners, municipal officers and servants, and all *chaukidars*, constables and other officers of police are prohibited from purchasing any property at any sale made under this chapter.

Certain persons prohibited from purchasing at sales.

Recovery in special cases.

165. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Recovery from occupier of tax due from non-resident owner and deduction from rent.

Provided that no arrear of rate shall be so recovered from the occupier of any holding if it has remained due from the owner thereof for more than one year or if it is due on account of any period during which such occupier was not in occupation of such holding :

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one of such persons shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding.

166. The purchaser of any holding or part of a holding in respect of which any sum is due at the time of purchase on account of any rate under this Act shall, subject to the provision of sub-section (2) of section 144, be liable for the said sum.

Liability of purchaser for vendor's share of rate.

167. The sum due on account of any rate under this Act from any person in respect of any holding shall, subject to the prior payment of the land revenue (if any) due to the Government or of the rent (if any) due to a landlord under the Bengal Tenancy Act, 1885, thereupon, be a first charge upon the said holding.

Rate to be a charge on holdings.

(Chapter V.—Municipal Taxation.—Sec. 168.)

The tax on carriages, and on horses and other animals.

**Tax on carriages,
horses and other
animals.**

168. (1) When it has been determined that a tax on carriages, and on horses and other animals mentioned in Schedule III shall be imposed, the Commissioners at a meeting shall, subject to the provisions of section 169, make an order that the owner of every carriage, and every horse and other animals of the kind mentioned in the said schedule, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the municipality, and is used in the ordinary course of business within it, shall pay the tax at the rate fixed under sub-section (2) in respect of such carriage, horse or other animal and they shall cause such order to be published in the manner prescribed.

(2) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect ; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

(3) Such tax shall not be imposed on—

(a) horses or ponies belonging to officers doing regimental duty at the rate of one animal for each officer ;

(b) horses and other means of conveyance exempt from any municipal tax under section 34 of the Auxiliary Force Act, 1920, or under section 16 of the Indian Territorial Force Act, 1920 ;

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of 1920.

(c) carriages or animals ¹[belonging to the Crown] or to the Commissioners or for keeping which for the execution of their duty an allowance is made ²[by the Central or any Provincial Government] or by the Commissioners to any of their officers ;

(d) animals used by, or exclusively for the purposes of, any regiment ;

(e) horses or ponies used by police-officers, at the rate of not more than one for each officer ;

(f) carriages the wheels of which do not exceed twenty-four inches in diameter ; and

(g) carriages or animals kept for sale by any *bona fide* dealer in such carriages or animals, and not used for any other purpose.

¹These words were substituted for the words "belonging to Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "by the Government", *ibid.*

of 1932.]

(Chapter V.—Municipal Taxation.—Secs. 169—174.)

169. In making an order under section 168 or by a subsequent order, the Commissioners at a meeting may exempt from the tax, imposed under section 168, any carriage or class of carriages mentioned in Schedule III.

Powers to exempt carriages or class of carriages from taxation.

170. The order of the Commissioners imposing a tax under section 168 shall continue in force until rescinded and the tax shall be levied at the rates specified in the order published as aforesaid, unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Duration of tax.

171. (1) In any municipality in which a tax has been imposed under section 168 the owner of every carriage, horse, and other animal mentioned in Schedule III shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses and other animals liable to the tax, for which he is bound to take out a license.

Half-yearly statement of liability and payment of tax.

(2) Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses and other animals specified in such statement, according to the rates specified in any order for the time being in force under section 168.

172. If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse or other animal mentioned in Schedule III, in respect of which no license has been given for such half-year, he shall forward a statement as required under section 171 within one month of the date on which he may have acquired possession thereof and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

Proportionate tax on carriages, etc., acquired during the half-year.

173. (1) On receiving the amount of the tax due the Commissioners, or some person authorised by them in that behalf, shall give to the person paying the same a license for the several carriages, horses and other animals for the period in respect of which the amount is received.

Grant of license on payment of tax.

(2) Such license shall be for the current half-year and no longer.

174. Whenever the owner of any carriage, horse or other animal who is liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate

Liability in absence of owner.

(Chapter V.—Municipal Taxation.—Secs. 175—179.)

sion the carriage, horse or other animal is for the time kept shall pay the tax and take out a license for the same.

Carriages, etc., not to be kept without a license.

175. No person shall keep, or be in possession of any carriage, horse or other animal without the license required under this Act :

Provided that no carriage which has not been brought into use or which is so damaged as in the opinion of the Commissioners to be unfit for use shall be liable to the tax.

Composition with livery stable-keepers.

176. The Commissioners at their discretion may compound for any period not exceeding one year with livery stable-keepers and other persons keeping carriages, horses or other animals for hire for a certain sum to be paid for the carriages, horses or other animals so kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 168 and 170.

Preparation of list of persons licensed.

177. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax.

Power to inspect stable, etc., and to summon persons liable to the payment of the tax.

178. (1) The Commissioners, or any person authorized by them in this behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been taken out.

(2) The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

Refund of tax in certain cases.

179. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year ; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such keeping or use of such carriage, horse or other

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(Chapter V.—Municipal Taxation.—Secs. 180—183.)

animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

180. Nothing in sections 168 to 179 shall be deemed to authorise the levy of more than one tax for the same period in respect of any carriage, horse or other animal which is used in the ordinary course of business in more than one municipality.

Prohibition of double tax.

In such cases the tax shall be levied by the Commissioners of the municipality within the jurisdiction of which the carriage, horse or other animal is kept.

181. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business within the meaning of section 168, if it is used on business on an average

Meaning of "used in the ordinary course of business".

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To section 182, add the following explanation, namely:—

"Explanation.—Manufacture or storage of goods in a municipality for the purpose of carrying on business outside the municipality shall be deemed to be carrying on a trade or calling within the municipality."

(Added by West Bengal Act XXVIII of 1951, section 16.)

[No. 48, dated the 1st April, 1952.]

The registration of carts.

183. (1) When it has been determined that a fee on registration of carts shall be imposed, the Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within the municipality, shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct :

Registration and numbering of carts.

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

(2) This section shall not apply to—

- (a) carts which are the property of the ¹[Crown] or of the Commissioners ;
- (b) carts which are kept without the limits of the municipality, and are only temporarily and casually used within such limits ; and
- (c) the municipality of Howrah.

¹This word was substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter V.—Municipal Taxation.—Secs. 184—189.)

(3) The registration of carts shall be made and the numbers assigned yearly or half-yearly, on such days as the Commissioners shall notify.

Fee for registration.

184. The fee payable for each registration under section 183 for every cart shall be such sum not exceeding six rupees as the Commissioners at a meeting may fix from time to time, if the registration has effect for one year and shall be half of this sum if the registration has effect for half a year.

Power to increase fees for carts with narrow tyres and rims.

185. Notwithstanding anything contained in section 184, the Commissioners at a meeting may, with the sanction of the ¹[Provincial Government], increase by any amount not exceeding fifty *per cent.* the fee to be paid for registration of any cart any wheel of which has a rim or tyre of less than two inches in width.

Proportionate payment of fee.

186. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he has become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as bears the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person shall have become possessed as aforesaid.

Transfer of ownership.

187. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such re-registration.

Carts not to be kept without being registered and without number.

188. No person shall keep, or be in possession of a cart not duly registered as required by this Act, nor shall any person, being the owner or driver of any cart, fail to affix thereto the registration number as required by this Act.

Seizure and sale of unregistered carts.

189. (1) If any person owns or keeps any cart without registering the same as required by this Act, the Commissioners, or any person authorized by them in this behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods) together with the animals, if any, drawing the same, and all police-officers are required, on the application of the Commissioners, or of any person duly authorized by them in that behalf, to assist in the said seizure.

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter V.—Municipal Taxation.—Sec. 190.)

(2) After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such cart and animals, if any, by auction at such place as they may state in the notice; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart and animals, if any, have been seized tenders, to the Commissioners, or to the person authorized by them to sell the property, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the property so seized.

(4) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart and animals, if any, seized under this section, may be devoted to the payment of any fine imposed for a breach of the provisions of section 188; and any property which has been seized under this section may be sold for the realization of any such fine.

190. (1) Nothing in sections 183 to 189 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

Carts used or registered in more than one municipality.

(2) When carts not kept within any municipality are so used in more than one municipality, the ¹[Provincial Government] may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(3) Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality:

Provided that such right is claimed by notice to the other municipality or municipalities concerned within two months of the date on which the fee becomes due.

(4) Where any dispute arises between the Commissioners of any two or more municipalities regarding any claim made

¹See foot-note 3 on p. 85, *ante*.

(Chapter V.—Municipal Taxation.—Secs. 191—196.)

under sub-section (3) of this section the matter shall be referred to the decision of the ¹[Provincial Government] and the decision of the ¹[Provincial Government] shall be final.

Meaning of
“used in the
ordinary course
of business”.

191. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 183 to 190, if it is used on business on an average twice a week.

Tolls on ferries.

Ferries may be
declared to be
municipal.

192. The Commissioners may, with the sanction of the ¹[Provincial Government], declare that any ferry not being vested in any other local authority within or adjacent to, the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund :

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the magistrate under the provisions of section 17 of the Bengal Ferries Act, 1885, or any similar law for the time being in force.

Ben. Act I
of 1885.

Duties of
Commissioners
in regard to
such ferries.

193. Every municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry.

Rate of tolls to
be established
and published.

194. When it has been determined to impose tolls on municipal ferries, the Commissioners at a meeting shall from time to time make and publish an order specifying the ferries and, with the sanction of the Commissioner of the Division, the rates at which such toll shall be levied and shall cause a copy of such order to be permanently affixed on some conspicuous place at the ferry ghat.

When persons
crossing river not
liable to toll.

195. No person shall be liable to pay any toll for crossing any river or stream at or near a municipal ferry, if he crosses the river or stream in a boat or other appliance which is kept for the personal use of such person.

Cancellation of
ferry lease, etc.

196. Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioners at a meeting that the

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter V.—Municipal Taxation.—Secs. 197—198A.)

lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from the Commissioners.

On the cancelment of a lease the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

197. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may require any person who refuses to pay the toll to leave the boat or appliance and to remove his goods from it. Toll must be prepaid.

198. No person shall keep a ferry-boat whether or not plying for hire within a distance of two miles above or below any municipal ferry without the previous sanction— Keeping of unauthorized ferry-boat.

- (i) of the Commissioners, if he plies within the limits of the municipality,
- (ii) of the Magistrate of the district, if he plies without such limits, or
- (iii) of the Magistrate of the district and the Commissioners, if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which was in existence at the commencement of the Bengal Municipal Act, 1884.

Ben. Act
III of
1884.

198A. The Commissioners at a meeting with the sanction of the ¹[Provincial Government] may make rules in all matters connected with the purposes of section 193, and for other matters relating to the management and leasing out of ferries. Power of Commissioners to make rules as to ferries.

¹Section 198A was inserted by s. 32 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 3 on p. 85, *ante*.

*(Chapter V.—Municipal Taxation.—Secs. 199—201.)**Tolls on bridges.*

Existing
toll-bars.

199. The ¹[Provincial Government] may, with the consent of Commissioners at a meeting, make over to the Commissioners any existing toll-bar on a bridge within the limits of the municipality to be administered by them until the ¹[Provincial Government] shall otherwise direct; every toll-bar, while so administered shall be deemed to be a municipal toll-bar, and the profits derivable therefrom, or such parts thereof as shall be agreed upon between the ¹[Provincial Government] and the Commissioners, shall be carried to the credit of the Municipal Fund.

Commissioners
may establish
toll-bar.

200. The Commissioners at a meeting, with the sanction of the ¹[Provincial Government], may establish a toll-bar and levy tolls on any bridge which they may have constructed after the commencement of the Bengal Municipal Act, 1884, or at any place within the municipality adjacent to such bridge at which tolls may conveniently be levied on carriages, carts and animals passing over such bridge; and the profits derivable therefrom shall be carried to the credit of the Municipal Fund:

Ben. Act
III of
1884.

Provided that no such toll-bar shall be established or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge and in maintaining such bridge in repair for the five years next after the construction thereof, together with interest on such expenses as provided in section 201.

Commissioners
to publish
expenses, etc.,
of toll-bars.

201. Whenever a toll-bar shall have been established, and tolls shall be levied, as provided in section 200, the Commissioners shall at the end of each year publish, by causing it to be posted up at their office, an abstract account showing—

- (i) the amount of expenses incurred in the construction of such bridge and in the maintenance of the same;
- (ii) the amount of interest which has accrued due thereon, at the annual rate of *six per centum*; and
- (iii) the amount which has been received from the profits of the said toll-bar since its establishment;

and, as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bar shall be removed and toll shall no longer be levied on such bridge.

¹See foot-note 3, on p. 85, *ante*.

of 1932.]

(Chapter V.—Municipal Taxation.—Secs. 202—205.)

202. When it has been determined that tolls shall be levied on any such bridge, the Commissioners at a meeting shall from time to time make and publish an order, with the sanction of the Commissioner of the Division, specifying rates at which such tolls shall be levied.

Rates of tolls to be established and published.

203. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid.

Power of collector or lessee in the case of refusal to pay toll.

204. No person taking through a toll-gate any motor vehicle, carriage, cart or animal (not exempted from toll) shall refuse to pay the toll, nor shall any person fraudulently avoid taking through a toll-gate any such motor vehicle, carriage, cart or animal with intent to evade payment of the toll.

Penalty for refusing to pay or avoiding payment of toll.

205. (1) If the toll due on any motor vehicle, carriage, cart or animal is not paid on demand, the person authorised to collect the same may seize such motor vehicle, carriage, cart or animal, or any part of its load of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

In case of non-payment of toll, vehicle, etc., may be seized and sold.

(2) After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice ; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) If the load or sufficient part thereof consists of articles which are subject to speedy and natural decay or consists of livestock, that load or part thereof may forthwith be sold under orders of the Commissioners.

(4) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction :

Provided that, if at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

(5) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed for contravention of section 204 ; and any property which has been seized under this section may be sold for the realization of any such fine.

(Chapter V.—Municipal Taxation.—Secs. 206—209.)

General provisions relating to tolls on ferries and bridges.

Lease of ferry
or toll-bar.

206. The Commissioners at a meeting may grant a lease—

- (a) of any municipal toll-bar for any period not exceeding three years, and
- (b) of any municipal ferry for any period not exceeding three years or with the sanction of the ¹[Provincial Government] for a longer period not exceeding nine years.

Table of tolls to
be hung up.

207. The Commissioners shall cause a table of tolls legibly written in Bengali to be hung up by the toll collector or lessee of the municipal ferry or toll-bar

in some conspicuous position at each end of every municipal ferry, and

in some conspicuous position near every municipal toll-bar,

so as to be easily read by all persons required to pay the toll.

Composition in
respect of tolls.

208. The Commissioners, or the lessee of any municipal ferry or toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable.

Exemptions.

209. (1) No tolls shall be paid for the passage of Government stores or the persons in charge of them ;

or of police-officers, or of any public or municipal or district board officer on duty, or of any person in their custody or of any property belonging to them or in their custody, or of any carriage, cart or animal employed by such persons for the transport of such property ;

or of conservancy carts or other carriages, carts or animals belonging to the Commissioners or of the persons in charge of them :

Provided that tolls shall be leviable for conveying such animals over a ferry.

(2) The Commissioners or their lessees shall not be bound to allow any person or thing not specified in sub-section (1) to cross a ferry or to pass a toll-gate without payment of the proper toll :

Provided that the Commissioners at a meeting may from time to time exempt any class of persons or things not specified in sub-section (1) from payment of the said toll ; and in

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter V.—Municipal Taxation.—Secs. 210—215.)

granting a lease of any ferry or toll-bar may stipulate that any municipal servants and property and any other person or things shall be allowed to pass without payment of the toll.

210. In all cases of resistance to the person authorised to collect tolls, police-officers shall assist, when required, and for the purpose shall have the same powers as they have in the exercise of their ordinary police duties.

Police-officers to assist.

211. No person who is authorized under this Act to collect tolls shall demand or take any higher tolls than the tolls authorized under this Act.

Prohibition of taking unauthorized tolls.

212. Any lessee of a municipal ferry or toll-bar who demands or takes any higher tolls than the tolls authorized under this Act shall, in addition to any other penalty to which he is liable, be also liable to have his lease cancelled.

Cancellation of lease.

Ben. Act
V of 1864.

213. If the ¹[Provincial Government] has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality it may, with the consent of the Commissioners at a meeting, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the ¹[Provincial Government] shall otherwise direct ; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the ¹[Provincial Government] and the Commissioners, shall thence forward be carried to the credit of the Municipal Fund.

Commissioners may be appointed to collect tolls in a navigable channel.

In such case the Commissioners shall exercise all powers vested by such Act in the Collector.

214. The ¹[Provincial Government] may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under section 213 and may at any time withdraw such order.

Provincial Government may order Commissioners to cease levying tolls.

Rules.

215. The ¹[Provincial Government] may make rules—

(a) prescribing the qualifications of, and the procedure to be followed by, an assessor ²* * * appointed under this Act ;

Power to make rules as to taxation.

(b) prescribing the procedure to be followed by a committee appointed under sub-section (1) of section 149 to review an assessment or valuation ;

¹See foot-note 3 on p. 85, ante.

²The words "of municipal taxes" were omitted by s. 33 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter VI.—Streets.—Secs. 216, 217.)

- (c) prescribing the form of notices under section 147 of notices of demand under sub-section (2) of section 155, of warrants under sub-section (1) of section 157, and returns of sales under sub-section (3) of section 159 ;
- (d) fixing the fees payable in connection with distraint under this Act ;
- (e) prescribing the conditions and limitations under which a water-rate or lighting-rate may be imposed under the proviso to clause (a) of sub-section (1) of section 125 ;
- (f) prescribing the conditions and limitations under which a license may be granted for the purpose of a tax on the trades, professions, and callings specified in Schedule IV ; and
- (g) regulating any other matter relating to taxes, tolls, fees or rates in respect of which this Act makes no provision or insufficient provision, and for which provision is, in the opinion of the ¹[Provincial Government], necessary, or which is directed to be prescribed.

CHAPTER VI.

Streets.

General.

Certain provisions relating to streets to be applied only to certain municipalities.

216. The provisions contained in sections 217 to 220 and in sections 223 to 229 shall not apply to any municipality, unless and until they have been expressly extended thereto by a notification issued by the ¹[Provincial Government] on application of the Commissioners at a meeting.

Building-lines and street alignments for public streets.

Power to Commissioners to prescribe building-line and street alignment.

217. (1) If the Commissioners at a meeting consider it expedient to prescribe for any public street a building-line or a street alignment, or both a building-line and a street alignment, they shall give public notice of their intention to do so :

Provided that no building-line shall ordinarily be prescribed for any street laid out and made before the commencement of this Act.

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter VI.—Streets.—Sec. 218.)

(2) Every such notice shall specify a period within which objections will be received, and a copy of such notice shall be sent by post to every owner of premises abutting on such street who is registered in respect of such premises on the books of the municipality :

Provided that failure or omission to serve such notice on any owner shall not invalidate proceedings under this section.

(3) The Commissioners shall consider all objections received within the said period and shall hear any objector who comes forward within such period as they may fix in this behalf, and may then make an order prescribing a building-line or a street alignment or both a building-line and a street alignment for such public street.

A register or book with plans attached shall be kept by Commissioners showing all public streets in respect of which a building-line or street alignment has been prescribed, and such register shall contain such particulars as to the Commissioners may appear to be necessary and shall be open to inspection by any person upon payment of such fee as may from time to time be fixed by the Commissioners at a meeting.

(4) A building-line shall not be prescribed so as to extend further back than the main front wall of any building (other than a boundary wall) abutting on the street at its widest part.

(5) Every order made under sub-section (3) shall be published in the ¹[*Official Gazette*], and shall take effect from the date of such publication.

218. (1) No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed under section 217 :

Restrictions on erection of, or addition to, buildings or walls within street alignment or building-line.

Provided that the Commissioners at a meeting may, in their discretion, permit additions to a building to be made within a street alignment, if such additions merely add to the height of, and rest upon, an existing building or wall, upon the owner of the building executing, if required to do so by the Commissioners, an agreement binding himself and his successors in interest—

- (a) not to claim compensation in the event of the Commissioners at any time thereafter calling upon him or such successors, by written notice to remove any addition made to any building in pursuance of such permission, or any portion thereof, and

- (b) to pay the expenses of such removal.

¹See foot-note 1 on p. 89, *ante*.

(Chapter VI.—Streets.—Secs. 222—224.)

any land used by the Commissioners for a public street, and in doing so impose any condition as to the description of any building to be erected thereon, as to the period within which such building shall be completed, as to the removal of any building existing thereon and as to any other matter that they deem fit.

Power to Commissioners to dispose of so much of a permanently closed street, square or garden as is not required.

222. (1) When any public street, or part thereof or any public square or garden, is permanently closed under section 221, the Commissioners, in pursuance of a decision arrived at at a meeting, may sell or lease the site of so much of the roadway and foot-path as is no longer required, or the site of the square or garden, as the case may be, making due compensation to, or providing means of access for, any person who may suffer damage by such closing.

(2) In determining such compensation allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden at or about the same time that the public street, square or garden on account of which the compensation is paid is closed.

Projected public streets.

Projected public streets.

223. (1) The Commissioners at a meeting may from time to time prepare schemes and plans of projected public street, showing the direction of such street, the street alignment and building-line on each side of them, their intended width and such other details as may appear desirable.

(2) The width of such projected streets, inclusive of space for foot-paths, shall not be less than twenty feet :

Provided that—

(a) the Commissioners at a meeting may for special reasons reduce the width of any projected street but not so as to be less than sixteen feet; and

(b) this sub-section shall not apply in any case in which the projected street, or any part thereof, runs along an existing street and the Commissioners consider it impracticable to widen the street to the extent of twenty feet.

Provisions of section 218 to apply to projected public streets.

224. The provisions of section 218 shall, with all necessary modifications, apply to public street projected under section 223.

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(Chapter VI.—Streets.—Sec. 225.)

Special provisions as to private streets.

225. (1) Any person intending to make or lay out a new private street shall send to the Commissioners a written notice, with plans and sections, showing the following particulars of the proposed street, namely :—

Making of new private streets.

- (a) the level, width and alignment thereof, and
- (b) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewerage, draining and lighting the street.

(2) The provisions of this Act as to the width of public streets and the height of buildings abutting thereon, and as to projected public streets, shall respectively apply in the case of streets referred to in sub-section (1) ; and all the particulars referred to in that sub-section shall be subject to approval by the Commissioners at a meeting :

Provided that the Commissioners at a meeting may allow a private street to be made or laid out of a width less than twenty feet but not less than sixteen feet.

(3) Within ninety days after the receipt of any notice under sub-section (1) the Commissioners at a meeting shall either sanction the making of the street, or disallow it, or ask for further information with respect to such street.

(4) Such sanction may be refused—

- (i) if the proposed street would conflict with any arrangements which have been made, or which are in the opinion of the Commissioners likely to be made within a reasonable period, for carrying out any general scheme of street improvement, or
- (ii) if the proposed street does not conform to the provisions of this Act referred to in sub-section (2), or
- (iii) if the proposed street is not designed so as to connect at one end with a street which is already open.

(5) If further information is asked for under sub-section (3), no steps shall be taken to make or lay out the street until orders have been passed upon receipt of such information, and such orders shall be passed within ninety days of the receipt of such further information.

(6) If within ninety days after the receipt of any notice under sub-section (1), or within ninety days after the receipt of any further information asked for under sub-section (3), the Commissioners have not refused sanction to the making of the private street, it shall be deemed that sanction to the same has been granted.

(Chapter VI.—Streets.—Secs. 226—228.)

**Prohibition of
breach of section
225.**

226. Except as provided in sub-section (6) of section 225, no person shall make or lay out any street referred to in sub-section (1) of section 225—

- (a) until he has obtained the sanction of the Commissioners under that section, or
- (b) in contravention of any orders made thereunder.

**Alteration or
demolition of
street made in
breach of section
225.**

227. (1) If any person makes or lays out any street referred to in sub-section (1) of section 225, without having obtained the sanction of the Commissioners under that section, or in contravention of any orders made thereunder, the Commissioners may, whether or not the offender be prosecuted under this Act, by written notice,—

- (a) require the offender to show sufficient cause, by a written statement signed by him and sent to the Commissioners on or before such day as may be specified in the notice, why such street should not be altered to conform to the provisions of the rules made under sub-section (1) of section 228 or, if such alteration be impracticable, why such street should not be demolished, or
- (b) require the offender to appear before them, either personally or by a duly authorised agent, on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

(2) If any person on whom such notice is served fails to show sufficient cause, to the satisfaction of the Commissioners, why such street should not be so altered or demolished, they may cause the street to be so altered or demolished, and the expenses thereof shall be paid by such person.

**Levelling, etc.,
of private
streets.**

228. (1) If any private street or any part thereof be not levelled, paved, metalled, flagged, channelled, sewered, drained or lighted in accordance with the rules to be made by the Commissioners at a meeting for this purpose, they may, by written notice to the owner of such private street or the respective owners of the land fronting, adjoining or abutting upon such street or part, as the case may be, from time to time require them to level, pave, metal, flag, channel, sewer, drain or light such street or part in accordance with the provisions of such rules.

(2) If such notice be not complied with and the Commissioners, under sub-section (2) of section 514, execute the works mentioned or referred to therein, the expenses thereby incurred shall be paid by the owner of such private street or the owners in default, in such proportion as may be settled by the Commissioners at a meeting.

of 1932.]

(Chapter VI.—Streets.—Secs. 229, 230.)

229. If any private street which conforms to the provisions of this Act referred to in sub-section (2) of section 225 be levelled, paved, metalled, flagged, channelled, sewered, drained and lighted in accordance with the provisions of the rules made under sub-section (1) of section 228, and if a majority of—

Power to Commissioners to take over private streets.

- (a) the owners of land or buildings in such street, or
- (b) the owners of the street, or
- (c) the owners who have paid the expenses referred to in sub-section (2) of section 228,

signify in writing their consent thereto, the Commissioners at a meeting shall declare the same, by written notice put up in any part of such street, to be a public street, and thereupon the same shall become a public street and shall vest in the Commissioners :

Provided that, where a private street has been in existence for not less than thirty years and is used by the people of the locality as a thoroughfare, the Commissioners at a meeting may declare such street to be a public street, even though it does not strictly comply with the provisions of this chapter, if—

- (a) the owners of the lands and buildings in such street, or
- (b) the owners of the street,

signify in writing their consent thereto.

Supplemental provisions for regulating and protecting streets.

230. (1) The Commissioners shall, during the construction or repair of a public street or of any water-works, drain or premises vested in them, or whenever any public street, water-works, drain or premises vested in them have, for want of repairs or otherwise, become unsafe for use by the public, take all necessary precautions against accident by—

Duties of Commissioners when constructing public streets, etc.

- (a) shoring up and protecting adjacent buildings, and
- (b) fixing bars, chains, posts or other barriers across or in any street for the purpose of preventing or diverting traffic during such construction or repair, and
- (c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(Chapter VI.—Streets.—Secs. 231—233.)

(2) No person shall, without the authority or consent of the Commissioners, in any way interfere with any arrangement or construction made by the Commissioners under subsection (1) for guarding against accident.

Hoardings to be set up during repairs.

231. (1) Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public street will be obstructed or rendered inconvenient or dangerous by means of such work, before beginning the same, cause hoardings or fences to be put up to the satisfaction of the Commissioners in order to separate the house where such works are being carried on from the street, and shall keep such hoardings or fences standing and in good condition, to the satisfaction of the Commissioners during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night :

Provided that, no person shall put up a hoarding or fence without the written permission of the Commissioners, nor shall he keep up the said hoarding or fence for a time longer than allowed in the said written permission.

(2) Any person who contravenes the provisions of subsection (1) or who, without written permission, erects or sets up any hoarding, scaffolding or fence whatsoever, or who, being permitted, fails to put up such hoarding, scaffolding or fence or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoarding or fence is standing, keep the same sufficiently lighted during the night, or who does not remove the same within eight days when directed by the Commissioners, shall be liable to fine as provided in this Act.

Leave to deposit materials temporarily on, or to excavate or close, a street.

232. The Commissioners may grant permission to any person, for such period and on such conditions as they may think fit, to deposit any movable property on any public street, or to make an excavation in any public street, or to enclose the whole or any part of any street, and may charge such fees as they may fix for such permission :

Provided that such person shall make due provision for the passage of the public and shall erect sufficient fences to protect the public from injury, danger or annoyance, and shall light such fences from sunset to sunrise sufficiently for such purpose.

Power to close a street or part of a street for repairs or other public purpose.

233. The Commissioners may close temporarily any public street or part thereof for the purpose of repairing such street, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose :

Provided that the Commissioners so closing any street shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such street.

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of 1932.]

(Chapter VI.—Streets.—Secs. 234—236.)

234. The Commissioners at a meeting may make an order closing any public street or part thereof to cart or motor traffic :

Power to close a street or part of a street to cart or motor traffic.

Provided that no such order shall remain in force for more than six months without the sanction of the ¹[Provincial Government].

235. (1) No person shall put up any verandah, balcony, sunshade, weather-frame or the like to project over any public street without the written permission of the Commissioners.

Sanction of Commissioners to projection over streets and drains.

(2) Subject to any rules made by the ¹[Provincial Government] prescribing the conditions for the sanction by the Commissioners of projections over public streets or drains, the Commissioners at a meeting may, in their discretion, give written permission on such conditions as they may think fit, and, on payment of such fees or rent as they may from time to time fix, to the owners or occupiers of buildings abutting on public streets to erect or re-erect verandahs, balconies, sunshades, weather-frames and the like, whether supported by pillars or not, to project from any building over a street or a drain in a street from any upper storey thereof, at such height from the surface of the street and to such an extent beyond the line of the plinth or basement wall as are specified in by-laws to be framed under section 245.

(3) In giving permission under sub-section (2), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, and the like may be allowed to project over such streets.

(4) At any time after any permission has been given under sub-section (2), the Commissioners at a meeting may, by written notice, require the owner or occupier of the building to remove the projection referred to in such permission and the owner or occupier shall be entitled to reasonable compensation out of the Municipal Fund for such removal.

236. (1) No platform shall be erected, re-erected or extended upon or over any public street or drain without the previous sanction of the Commissioners at a meeting.

Erection of platforms.

(2) The owner of every platform, except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct, take out a license for keeping the platform.

(3) Every such license shall remain in force until rescinded by the Commissioners at a meeting.

(4) For every such license there shall be paid annually a fee to be fixed by the Commissioners at a meeting:

¹See foot-note 3 on p. 85, ante.

(Chapter VI.—Streets.—Secs. 237—240.)

Provided that a platform erected, re-erected or extended upon or over any public street or drain before the commencement of this Act with the permission of the Commissioners at a meeting shall be allowed to remain on the same terms and conditions including the payment of any rent or fee prescribed in the permission.

Removal of fallen house, etc., obstructing street or drain.

237. Whenever any building, wall, revetment or other erection or any part thereof, or any tree, stone, soil or *debris* from private premises falls down or is caused to fall down and obstructs or encumbers any public street or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit.

Prohibition for cutting street.

238. (1) No person shall, without the consent of the Commissioners, dig or cut up a public street in order to provide for the passage of water or for any other purpose.

(2) Whoever contravenes the provisions of this section shall, in addition to any other penalty imposed under this Act, be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public street.

Regulation of troughs and rain-water pipes affecting a street.

239. The Commissioners may, by notice, require the owner or occupier of any building or land abutting on a street to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the Commissioners may think fit, so as not to inconvenience persons passing along the street.

Removal of encroachments over house-gullies, etc.

240. (1) The Commissioners—

(a) may, without notice themselves or by any officer authorized by them in writing in this behalf remove, alter or otherwise deal with any wall, hoarding, scaffolding, fence, rail, post, platform or other projection, obstruction or encroachment (not being a portion of a building or fixture referred to in section 241) which has, without first obtaining their written permission been erected or set up in, over, above or upon any house-gully, or any public street, sewer, drain, aqueduct, water-course or *ghat*;

(b) may issue a notice requiring any person to remove any wall, hoarding, scaffolding, fence, rail, post, platform or other projection, obstruction, or encroachment (not being a portion of a building

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(Chapter VI.—Streets.—Sec. 240.)

or a fixture referred to in section 241) which he may have erected or set up in, over, above, or upon any house-gully, or any public street, sewer, drain, aqueduct, water-course or *ghat*, and which remains so erected or set up when the period covered by any permission given in its behalf has expired ; and

- (c) may, themselves or by any officer authorized by them in writing in this behalf, remove without notice any materials or goods or any movable property, which has, without their permission, been deposited in a public street or in, over, above, or upon any house-gully, or any public sewer, drain, aqueduct, water-course or *ghat*, or which remains so deposited, when the period covered by any permission given in this behalf has expired, whether or not the offender be prosecuted under this Act or any rules or by-laws made thereunder, and the offender shall be liable to pay the expense of such removal.

(2) If the person who erected or set up any of the projections, obstructions or encroachments referred to in clause (b) of sub-section (1) is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said projection, obstruction or encroachment, requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition.

(3) Notwithstanding any prosecution which may be instituted, if the person on whom a notice has been issued under clause (b) of sub-section (1) fails to comply with the requisition within the period specified in the notice,

or if where a notice has been posted up under sub-section (2) the projection, obstruction or encroachment is not removed within the period specified in such notice,

the Magistrate may, on the application of the Commissioners, order that the projection, obstruction or encroachment be removed, and thereupon the Commissioners may, notwithstanding anything contained in sections 514 to 518, remove such projection, obstruction or encroachment,

and the expenses thereby incurred shall be recovered from the person who erected or set up the same or by the sale of the materials removed.

(4) No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section.

(Chapter VI.—Streets.—Secs. 241, 242.)

Power to Commissioners to remove or alter verandah, etc., or fixtures attached to building which project, etc., over public street or land.

241. (1) When any verandah, platform or other similar structure or any fixture attached to a building so as to form part of the building, whether erected before or after the commencement of this Act, causes a projection, encroachment or obstruction over or on any house-gully or public street or any land vested in the Commissioners they may, by written notice, require the owner or occupier of the building to remove or alter such structure or fixture.

(2) If the expense of removing or altering any such structure or fixture is paid by the occupier of the building in any case in which the same was not erected by himself, he shall be entitled to deduct any reasonable expense incurred for the purposes of such removal or alteration from the rent payable by him to the owner of the building.

(3) If the person on whom a notice is issued under subsection (1) fails to comply with the requisition within the period specified therein, the Magistrate may, on the application of the Commissioners, order that such structure or fixture be removed or altered, and thereupon the Commissioners may carry into effect the order of the Magistrate, and recover from the owner or occupier of the building the cost thereby incurred :

Provided that if the owner or occupier proves that any such structure or fixture was erected before the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality or in the case of a municipality, constituted under the Bengal Municipal Act, 1884, in which none of the aforesaid Acts was in force prior to the commencement of that Act, before the date of the constitution of that municipality, or, in the case of a municipality constituted after the commencement of this Act, before the date of the constitution of that municipality, the Magistrate shall order reasonable compensation to be paid to any person who suffers damage by the removal or alteration thereof.

Ben. Act
IV of
1864.
Ben. Act
VI of
1868.
Ben. Act
V of
1876.
Ben. Act
III of
1884.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

Commissioners may require landholders to trim hedges, etc.

242. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any public street or drain and to cut and trim any trees thereon overhanging any public street or drain or tank or any well used for drinking purposes, or obstructing any public street or drain or any property of the Commissioners, or likely to cause damage to any person using any public street, or fouling or likely to foul the water of any well or tank.

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(Chapter VI.—Streets.—Secs. 243—245.)

243. Whenever any public street or drain or any other municipal property is damaged, washed away or eroded by any private pool, ditch, tank, pond, pit or other excavation which exists by the side of such street, drain or property, the Commissioners may, by written notice, require the owner or occupier of the land on which such pool, ditch, tank, pond, pit or excavation is situated to repair the damage and to restore the street, drain or property to its original condition as far as possible within one month from the date of the service of such notice.

Commissioners may require owners of land to repair damage to streets, etc.

244. (1) The Commissioners at a meeting may cause a name to be given to any public street or square and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may, from time to time, cause such names and numbers to be altered.

Names of streets and numbers of houses.

(2) No person shall destroy, pull down, deface or alter any name or number put up by the Commissioners under the authority of sub-section (1).

245. The Commissioners at a meeting may make by-laws—

Power to make by-laws.

- (a) to regulate or prohibit any description of traffic on public street, or on approaches to *ghats* or public ferries and to prevent obstructions, encroachments, or excavations on or near such streets, *ghats* or ferries ;
- (b) to prevent, prohibit or regulate the use or occupation of any or all public streets or places by any person for the sale of articles or for the exercise of any calling or for setting up any booth or stall, and to provide for the levy of fees for such use or occupation ;
- (c) to determine the information and plans to be furnished to the Commissioners under section 225 ; and
- (d) to regulate the conditions on which permission may be given under section 235 with reference to projections over public streets and drains and to provide for the payment of fees or rent for such user of the streets and drains and to provide for the removal of such projections.

(Chapter VII.—Conservancy and Drainage.—Secs. 246—249.)

CHAPTER VII.

Conservancy and Drainage.

Removal of sewage, rubbish and offensive matter.

Duties of
Commissioners
in relation to
conservancy.

246. The Commissioners at a meeting shall provide for the removal—

- (a) of sewage, rubbish and offensive matter from all public latrines, urinals and drains, and from all public streets and all other property vested in the Commissioners, and
- (b) in any municipality wherein a conservancy-rate has been imposed under section 123, of sewage and offensive matter from all private latrines, urinals and cess-pools,

and for the disposal of such sewage, rubbish or offensive matter and for the cleansing of such latrines, urinals, drains and cess-pools, and shall maintain sufficient establishment, animals, carts, sewers, pumps, drains, outfall and disposal works and implements for the said purposes.

Control over
night men.

247. (1) The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits.

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

(2) Subject to the approval of the ¹[Provincial Government], the Commissioners at a meeting may make rules to define the duties of such persons, and any breach of such rules shall subject the offender to a forfeiture of license and to a fine as provided in such rules.

Power to
prescribe times
and manner of
removal of
sewage, etc.

248. The Commissioners at a meeting may from time to time publish an order prescribing the hours within which and the manner in which sewage, rubbish and offensive matter may be removed.

Power of
conservancy
establishment.

249. All servants of the Commissioners employed for the purposes of this chapter may, within such hours as may be fixed from time to time by the Commissioners at a meeting,

¹See foot-note 3 on p. 85, ante.

(Chapter VII.—Conservancy and Drainage.—Secs. 250—252.)

enter on any premises of which the occupier or owner is liable to pay a conservancy-rate, and do all things necessary for the performance of their duties under this chapter.

250. In any municipality ¹[or part thereof] wherein a conservancy-rate has not been imposed, the Commissioners at a meeting may provide places convenient for the deposit of sewage, rubbish and offensive matter and may require the occupiers of houses to cause the same to be deposited daily or at other stated intervals in such places, and may remove the same at the expense of the occupier from any house, if the occupier thereof fails to do so as required by this section.

Deposit and removal of sewage, etc., in certain municipalities.

251. (1) The Commissioners at a meeting may from time to time publish an order prescribing the hours within which only an occupier of any house or land may place rubbish or offensive matter on the public street adjacent to his house or land in a proper receptacle provided by the Commissioners in order that such rubbish or offensive matter may be removed by the servants of the Commissioners.

Appointed hours for placing rubbish, etc., on public street.

(2) No person shall place or allow his servant to place rubbish or offensive matter on a public street at other than the times appointed and except in the receptacles provided by the Commissioners under sub-section (1).

252. (1) The Commissioners at a meeting may contract with the occupier of any premises to remove rubbish or offensive matter direct therefrom and may charge fees in this behalf.

Removal of rubbish, etc., from premises.

(2) When building operations are being carried on in any premises or when any premises are used for carrying on any manufacture, trade or business, the Commissioners may,—

(a) by written notice, direct the occupier of such premises to collect all rubbish and offensive matter accumulating on such premises in the course of such operations, manufacture, trade or business and to remove the same, at such times, in such carts or receptacles, and by such routes as may be specified in the notice to a place provided or appointed in this behalf by the Commissioners, or

(b) after giving such occupier written notice of their intention so to do, themselves cause all such rubbish and offensive matter to be removed, and charge such occupier for such removal such periodical fee as they may specify in such notice :

Provided that the requisition under clause (a) shall not be enforced by the Commissioners nor shall action be taken

¹These words were inserted by s. 34 of the Bengal Municipal (Amendment) Act, 1936 (Ben Act XI of 1936).

(Chapter VII.—Conservancy and Drainage.—Secs. 253—255.)

by them under clause (b) until the occupier of the premises has been given an opportunity of being heard within such time as may be specified in the written notice that is served on him.

Removal of
offensive matter
from or near
street.

253. No person who, being the occupier of a house in or near a public street, shall keep or allow to be kept, for more than twenty-four hours, or for more than such shorter time as may be fixed by the Commissioners at a meeting, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, nightsoil or filth or any noxious or offensive matter in or upon such house, or in any outhouse, yard or ground attached to and occupied with such house, nor shall any person suffer such receptacle to be in a filthy or noxious state, or neglect to employ proper means to cleanse the same.

Prohibition of
allowing
sewage,
offensive matter
or rubbish to be
thrown or run
into street or
drain thereof.

254. No person shall—

- (i) throw or put or cause or permit to be thrown or put, any sewage or offensive matter upon any street, or drop, pass or place, or cause to be dropped, passed or placed, into or in any drain, any brick, stones, earth or ashes or any substance or matter, by which or by reason of the amount of which such drain is likely to be obstructed ; or
- (ii) without the permission of the Commissioners pass, or permit or cause to be passed, into any drain provided for a particular purpose any matter or liquid for the conveyance of which such drain was not provided ; or
- (iii) without the permission of the Commissioners cause or suffer to be discharged into any drain from any factory, bakehouse, distillery, workshop or work place, or from any building or place in which steam, water or mechanical power is employed, any hot water, steam or fumes, or any liquid which would prejudicially affect the drain or the disposal by sale or otherwise of the sewage conveyed along the drain, or which would, from its temperature or otherwise, be likely to create a nuisance.

Disposal of dead
bodies of
animals.

255. (1) Whenever an animal in the charge of a person dies, otherwise than by being slaughtered either for sale or consumption or for some religious purpose, the person in charge thereof shall, either—

- (a) convey the carcass within twenty-four hours to a place (if any) fixed by the Commissioners for the disposal of the dead bodies of animals, or to a place beyond municipal limits not being within one mile of those limits, or

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(Chapter VII.—Conservancy and Drainage.—Secs. 256—258.)

(b) give notice of the death within six hours to the Commissioners whereupon the Commissioners shall cause the carcass to be disposed of.

(2) For the disposal of the carcass under clause (b) of subsection (1), the Commissioners may charge such fee as they may determine at a meeting and may recover the same, if not paid in advance, from the owner or person in charge of the animal.

256. All things deposited in places provided or appointed under this chapter for the deposit of sewage, offensive matter, rubbish and carcasses of animals shall be the property of the Commissioners.

Rubbish deposited to be the property of the Commissioners.

257. The Commissioners in pursuance of a decision arrived at at a meeting shall provide and maintain in sufficient numbers and in proper situations public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

Public latrines.

258. (1) When application is made to erect or materially alter any building—

(i) intended for human habitation, or

at or in which labourers or workmen are to be employed,

Power to Commissioners to require privy and other accommodation to be provided in buildings.

the Commissioners may direct that such privy and urinal accommodation shall be provided as they consider to be suitable therefor.

(2) In directing the provision of any such accommodation the Commissioners may determine in each case—

(a) where an underground sewerage system has been provided, whether such building shall be provided with service or connected privies or urinals, or partly with one and partly with the other ; and

(b) what shall be the site or position of each privy or urinal, and their number.

(3) When any premises at or in which not less than twenty labourers or workmen are employed are without privy, urinal, bathing or washing place accommodation to the satisfaction of the Commissioners they may, by written notice, require the owner of such premises to provide such privy, urinal or bathing or washing place accommodation as they may prescribe.

(Chapter VII.—Conservancy and Drainage.—Secs. 259, 260.)

Power to
Commissioners
to require such
provisions to be
made in other
cases.

259. (1) When any premises intended for human habitation are without privy or urinal accommodation, or if the Commissioners are of opinion that the existing privy or urinal accommodation available for the persons occupying or employed in any premises is insufficient, inefficient, or on any grounds objectionable, the Commissioners may, by written notice, require the owner of such premises—

- (a) to provide such, or such additional, privy or urinal accommodation as they may prescribe ; or
- (b) to make such structural or other alterations in the existing privy or urinal accommodation as they may prescribe ; or
- (c) where there is an underground sewerage system, to substitute connected-privy or connected urinal accommodation for any service-privy or service-urinal accommodation :

Provided that where the privy or urinal accommodation of any premises—

- (i) has been, and is being, used in common by the persons occupying or employed in such premises and any other premises, or
- (ii) is, in the opinion of the Commissioners, likely to be so used,

the Commissioners may, if they are of opinion that such accommodation is sufficient to admit of the same being used by all the persons occupying or employed in all the said premises, direct in writing that separate privy or urinal accommodation need not be provided on or for such other premises :

Provided also that the Commissioners may, if they are of opinion that there is sufficient public latrine accommodation available for all the persons occupying or employed in any premises, direct that separate privy or urinal accommodation need not be provided for such premises.

(2) Any requisition under sub-section (1) may comprise any detail specified in sub-section (2) of section 258.

Breach of
by-laws in
regard to
house-drain,
etc.

260. When by-laws have been framed under section 269 or section 277 no person shall construct, renew, rebuild, remove, obstruct, destroy, or change any house-drain, cess-pool, privy, sink, or urinal or appurtenances thereof, in contravention of any such by-law or of any notice issued or direction given thereunder or without the written permission of the Commissioners at a meeting.

of 1932.]

(Chapter VII.—Conservancy and Drainage.—Secs. 261—263.)

261. No person shall, without the written permission of the Commissioners at a meeting, construct or keep any house-drain, service-privy, urinal or cess-pool within fifty feet of any tank, well or water-course or any reservoir for the storage of water or construct any privy with a door or trap-door opening into any road or drain.

Location of house-drains, privies, etc.

262. (1) All latrines, urinals, sinks, cess-pools and drains shall be subject to the control of the Commissioners and the Commissioners or any officer authorized by them in this behalf may inspect any latrine, urinal, cess-pool, sink, drain or receptacle for sewage or offensive matter at any time between sunrise and sunset, after notice in writing to the occupier of the premises in which such latrine, urinal, cess-pool, sink, drain or receptacle is situated and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cess-pool, sink, drain or receptacle.

Powers of Commissioners to inspect latrines, urinals, etc.

(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cess-pool, sink, drain or receptacle is found to be in bad order or condition or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.

263. (1) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice,—

Powers of Commissioners to require repair, alteration, removal of latrine, etc.

(a) to close, remove, alter, repair, disinfect or put in good order any cess-pool, drain or receptacle for sewage, offensive matter or rubbish pertaining to such land or building, to provide to their satisfaction access from a house-gully or lane to any service-privy or service-urinal in or on such land or building, or to demolish any privy or urinal constructed, rebuilt or altered in or on such land or building in contravention of section 261 or any by-law framed under section 269 or section 277 ;

(b) to provide such cess-pools, drains or receptacles for sewage, offensive matter or rubbish, as should, in their opinion, be provided for the building or land whether in addition or not to any existing ones ; or

(Chapter VII.—Conservancy and Drainage.—Secs. 264—266.)

- (c) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(2) When requiring under sub-section (1) anything to be provided, altered or done, the Commissioners may specify in the notice the description of the thing to be provided, the pattern to conform with which the thing is to be altered, and the manner in which the thing is to be done.

Powers of Commissioners to require construction of house-gully.

264. (1) Where a privy or privies belonging to one or more premises are so placed as in the opinion of the Commissioners to afford to the municipal conservancy staff no suitable means of access thereto for the purpose of cleansing such privy or privies, the Commissioners may, by written notice to the owner or owners of such privy or privies, require them to provide a house-gully of such dimensions and so paved and drained as they may think necessary for such purpose.

(2) If such notice be not complied with within the time fixed by the Commissioners, they may themselves acquire land and construct such house-gully, and the expenses thereby incurred shall be paid by the owner in default, and where there is more than one owner, by the owners in such proportion as may be settled—

- (a) by the Commissioners at a meeting ; or
(b) in case of dispute, by the District Magistrate.

(3) The house-gully after construction shall be deemed to be a private street unless and until it vests in the Commissioners in accordance with the provisions of section 229.

Supply of disinfectants by Commissioners.

265. When, under sub-section (1) of section 263, an owner or occupier is required by the Commissioners to use disinfectants the Commissioners may themselves supply disinfectants or deodorants for such use at cost price, and the expenses thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of the cess-pool, drain or receptacle, as the case may be, or the Commissioners at a meeting may, if they think fit, order that such expense shall be paid from the Municipal Fund.

Neglect to keep latrine, etc., in proper order.

266. The owner or occupier of any premises to which any latrine, urinal, cess-pool, drain or other receptacle for sewage or offensive matter pertains, shall keep in a proper state such latrine, urinal, cess-pool, drain or other receptacle :

Provided that no person who pays a conservancy-rate shall be liable to punishment for non-compliance with the

of 1932.]

(Chapter VII.—*Conservancy and Drainage.*—Secs. 267—269.)

provisions of this section where the default is exclusively due to the failure of the Commissioners to perform their obligations under this Act.

267. The Commissioners in pursuance of a decision arrived at at a meeting shall make any special scavenging arrangements that may be necessary on occasions of fairs, festivals or other large assemblies of people, and in the case of such assemblies held in connection with any place of pilgrimage in or within two miles of the municipality, the Commissioners may require the persons having control over such place of pilgrimage to make such contribution as the ¹[Provincial Government] may on each such occasion approve towards the cost of such arrangements.

Scavenging on occasions of fairs and festivals and contribution from persons having control over places of pilgrimage.

268. Where in the opinion of the Commissioners at a meeting the accumulation of rubbish, sewage or offensive matter on any premises, or the amount of rubbish, sewage or offensive matter from any premises deposited on any place other than a place set apart by the Commissioners for the disposal of rubbish, sewage or offensive matter is excessive, they may sanction the employment of special establishment for the cleansing of such premises or for the removal of such rubbish, sewage or offensive matter and may impose on the owner or occupier of such premises such fee as they may deem proper to defray the cost of such establishment.

Power to Commissioners to employ special establishment for removing excessive rubbish, sewage or offensive matter.

By-laws relating to conservancy.

269. The Commissioners at a meeting may make by-laws—

Power to make by-laws regarding conservancy.

- (a) regulating the disposal of sewage, offensive matter, the carcasses of animals and rubbish ;
- (b) requiring notice of intention to construct, repair or alter a privy or urinal or any appurtenances thereof and determining the plans, specifications or other particulars to be furnished therewith ;
- (c) regulating the giving or refusing of sanction to the construction, repair or alteration of privies or urinals or appurtenances thereof, their position, design, ventilation, flooring, drainage, and providing for their proper and efficient maintenance ;
- (d) where there is an underground sewerage system providing for the proper connection of privies and urinals therewith and the fees to be charged in this behalf and regulating the material, size, laying, position, trapping, ventilation and flushing

¹See foot-note 3 on p. 85, *ante*.

The Bengal Municipal Act, 1932.

[Ben. Act XV

(Chapter VII.—Conservancy and Drainage.—Secs. 270—272.)

of all private pipes or sewers pertaining to such privies or urinals, and the proper construction, flooring and ventilation of connected privies and urinals and for the provision of all appurtenances thereof ;

(e) regulating the position, construction and maintenance of cess-pools and sinks ; and

(f) generally regulating conservancy.

Drainage.

Construction of
public drains.

270. The Commissioners in pursuance of a decision arrived at at a meeting may construct within or, subject to the sanction of the ¹[Provincial Government], outside the municipality, such drains as they think necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street :

Provided that no drain shall be constructed within the limits of a Cantonment without the approval of the ¹[Provincial Government] and otherwise than with the concurrence of the Officer Commanding-in-chief the Command in which such Cantonment is situated or, in the event of such concurrence being withheld, with the previous sanction of the ²[Central Government].

Alteration of
public drains.

271. (1) The Commissioners in pursuance of a decision arrived at at a meeting may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve a municipal drain and may discontinue, close up or remove, any such drain.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

Use of public
drains by
private owners.

272. The owner or occupier of a building or land shall be entitled to cause his drains to empty into the municipal drains, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners at a meeting prescribe, as to the mode in which and the superintendence under which the communications are to be made between private drains and municipal drains.

¹See foot-note 3 on p. 85, *ante*.

²These words were substituted for the words " Governor General in Council " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter VII.—Conservancy and Drainage.—Secs. 273—275.)

273. No person shall, without the written consent of the Commissioners first obtained, make or cause to be made, or alter, or cause to be altered, any drain or branch drain leading into any of the municipal sewers or drains or into any water-course, street or land vested in the Commissioners, and the Commissioners may cause any drain or branch drain so made, or altered, to be demolished, altered, remade or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such drain.

Power to order demolition of drain constructed without consent of Commissioners.

274. (1) If it appears to the Commissioners at a meeting that a group or block of buildings may be drained or improved more economically or advantageously in combination than separately, and if a municipal sewer or drain of sufficient size already exists or is about to be constructed within one hundred feet of any part of such group or block of buildings, the Commissioners may cause such group or block of houses to be so drained and improved,

Group or block of buildings, etc., may be drained by a combined operation.

and the expenses thereby incurred shall be recovered from the owners of such buildings, in such proportions as shall to the Commissioners seem fit.

(2) Not less than one month before any such work is commenced the Commissioners shall give to each such owner—

- (a) written notice of the nature of the proposed work;
- (b) an estimate of the expenses to be incurred in respect thereof and of the proportion of such expenses payable by him.

275. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and a municipal drain or some place approved by the Commissioners for the discharge or drainage is situated at a distance not exceeding one hundred feet from any part of the said premises, they may, by written notice, require the owner of the said premises—

Power to Commissioners to enforce drainage of undrained premises situate within one hundred feet of a municipal drain.

- (a) to make a house-drain, emptying into such municipal drain or place, of such material, size and description and with such flushing arrangements as the Commissioners may prescribe;
- (b) to remove any existing house-drain, or other appliance or thing used or intended to be used for drainage, which is injurious to health:

Provided that the land necessary for making the house-drain empty into the municipal drain or approved place may be acquired by the Commissioners at the cost of the owner of the said premises.

[Ben. Act XV]

(Chapter VII.—Conservancy and Drainage.—Chapter VIII.
—Water-supply, Lighting, Drainage and Sewerage
Systems.—Secs. 276—278.)

Power to
Commissioners
to enforce
drainage of
undrained
premises in
other cases.

276. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and there is no municipal drain within one hundred feet of any part of the said premises, they may, by written notice, require the owner of the premises to construct—

- (a) a close cess-pool of such material, size and description, and in such position, as they may prescribe, and
- (b) a house-drain communicating with such closed cess-pool.

By-laws relating to drainage.

Power to
Commissioners
to make by-laws.

277. The Commissioners at a meeting may make by-laws—

- (a) requiring every person who intends to construct, repair, add to or alter a house-drain or cess-pool, to submit an application to the Commissioners with such plans and other particulars as may be prescribed and regulating the giving and refusing of sanction to such application ; and
- (b) regulating the material, size, laying, flushing, ventilation, trapping, and position of drains and generally their construction, repair and maintenance.

CHAPTER VIII.

Water-supply, Lighting, Drainage and Sewerage Systems.

Commissioners
to provide
water-supply,
drainage and
lighting.

278. (1) It shall be lawful for the Commissioners of every municipality—

- (a) to provide a sufficient supply of water for the domestic use of the inhabitants ;
- (b) to provide and maintain a sufficient system of drainage and conservancy ; and
- (c) to cause the public streets to be sufficiently lighted.

(2) When it has been determined that a water-rate, conservancy-rate, or lighting-rate shall be imposed within a municipality the Commissioners shall—

- (a) provide a sufficient supply of water for the domestic use of the inhabitants ; or

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(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 279—281.)

- (b) provide and maintain a sufficient system of drainage and conservancy ; or
- (c) cause the public streets to be sufficiently lighted, as the case may be.

279. (1) Subject to the rules made by the ¹[Provincial Government] under section 311 and in accordance with sanction granted under those rules, the Commissioners of any municipality or such Commissioners acting conjointly with any other local authority, may in pursuance of a decision arrived at at a meeting, within or without a municipality,—

Construction of waterworks, drainage or sewerage works.

- (a) construct waterworks, or drainage or sewerage works or works required for the introduction of a system of lighting by electricity, gas or otherwise, and
- (b) from time to time enlarge, lessen, alter the course of or otherwise modify or discontinue, close up, or remove the same.

(2) The ¹[Provincial Government] may advance from the public funds on the security of the Municipal Funds and in the case of a joint scheme on the security of the municipalities and other local authorities, if any, concerned therein, the cost of preparing and carrying out any drainage, water-supply, sewerage, or lighting scheme sanctioned by the Government under the provisions of sub-section (1), and such advance shall be recoverable under Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance.

IX of
1914.

280. The ¹[Provincial Government] may, on the application of the Commissioners at a meeting or of the local authority acting with them under the provisions of section 279, direct that any works specified in any scheme or joint scheme for the purposes of section 279 shall be executed by an officer to be appointed by the ¹[Provincial Government] and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Power to appoint an officer to execute the work.

281. (1) If at any time it appears to the ¹[Provincial Government] that the Commissioners of any municipality have made default in providing their municipality or any part of it with proper and sufficient drains or sewers or in providing a good and sufficient supply of water or lighting, having

Power to compel municipality to provide proper drainage, sewerage, etc.

¹See foot-note 3 on p. 85, *ante*.

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Sec. 282.)

regard to the financial resources of the municipality, and that danger arises from such default to the health or safety of the inhabitants of the municipality or any part of it, the ¹[Provincial Government] may cause a scheme of drainage, sewerage, lighting or water-supply to be prepared by such person as it may depute for the purpose.

(2) When a scheme has been prepared for a municipality under sub-section (1), the ¹[Provincial Government] may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme.

(3) The ¹[Provincial Government] shall consider any objections and suggestions which may be submitted by the Commissioners and, if satisfied that the execution and maintenance of the scheme will not subject the financial resources of the municipality to any undue strain, may, subject to the rules framed under section 311, sanction the scheme with such modifications, if any, as it may think proper and specify a period during which the scheme shall be carried out.

(4) If the scheme is not carried out within the period fixed, the ¹[Provincial Government] may, by order, appoint some person to carry it out and may direct that the cost of the works including the remuneration of the persons appointed, and of the supervising establishment, the cost of land acquisition and any other incidental charges shall be paid within such time as it may fix from the Municipal Fund, and may, if necessary, direct that any rate or rates authorized under this Act shall be levied or increased (but not so as to exceed any *maximum* prescribed in that behalf) and may further, or as an alternative, advance any sum of money, required in its opinion for the execution of the scheme, from the public funds on the security of the Municipal Fund and such advance shall be recoverable under the Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance. IX of 1914.

(5) The person appointed under sub-section (4) may, for the purpose of executing the scheme, exercise any of the powers conferred on the Commissioners by or under this Act, which are specified in that behalf in the order issued under sub-section (4).

Power to compel execution of joint drainage schemes, etc.

282. (1) If the ¹[Provincial Government] is of opinion that the conditions described in sub-section (1) of section 281, prevail in two or more adjoining municipalities, or any part

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 283, 284.)

thereof and that, in the interests of efficiency and economy, a joint drainage, sewerage, lighting or water-supply scheme should be prepared for both or all such municipalities or any part thereof, it may cause a joint scheme to be prepared accordingly.

(2) All the provisions of section 281 shall apply *mutatis mutandis* to such joint scheme and the ¹[Provincial Government] shall determine what proportion of the cost of preparing, executing and maintaining such scheme shall be borne by the Commissioners of each municipality concerned.

283. (1) Where the ¹[Provincial Government] causes a scheme to be prepared under section 281 or section 282 and the Commissioners of the municipality or municipalities concerned and the local authority or local authorities of any other area or areas apply to have the scheme extended so as to serve such area or areas, the ¹[Provincial Government] may, by order notify its general approval to such extension, determine what proportion of the cost of preparing, executing and maintaining the scheme shall be paid by such other local authority or local authorities and prescribe conditions for the punctual payment of such proportion.

Extension of drainage schemes, etc.

(2) A copy of such order shall be sent to the Commissioners of each municipality concerned and to such other local authority or local authorities, and if they request that the proposed extension of the scheme shall be made, the ¹[Provincial Government] shall, subject to the rules made under section 311, finally sanction such extension.

284. If at any time after any joint scheme has been finally sanctioned any dispute arises between the Commissioners and any other local authority concerned in such scheme respecting such matters as supervision, management, maintenance, extension, repairs, alterations, the quantity of water or lighting to be supplied to each municipality or to any area under the control of any other local authority concerned, connection with the mains and the fees charged therefor and the like, a reference shall be made to the ¹[Provincial Government], whose orders shall be final and shall not be questioned in any court :

Disputes as to joint schemes.

²Provided that, if the dispute is between the Commissioners and a Cantonment Authority or the Port Authority of a major port, the orders of the Provincial Government shall be subject to the concurrence of the Central Government.

¹See foot-note 3 on p. 85, *ante*.

²This proviso was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Sec. 285.)

Power to Provincial Government to take control over imperfect, inefficient or unsuitable drainage work, etc.

285. (1) If at any time it appears to the ¹[Provincial Government] that any drainage works, sewerage works, lighting works or water works executed under the provisions of sections 279, 281, 282 or 283 or vested in the Commissioners of any municipality are maintained or worked in an imperfect, inefficient or unsuitable manner, the ¹[Provincial Government] may, by written order, direct the Commissioners of the municipality or municipalities or other local authority or local authorities, within a period specified in the order, to show cause at a meeting why the drainage works, sewerage works, lighting works or water works with all plant, fittings and appurtenances thereof should not be handed over for such period as the ¹[Provincial Government] may fix to the control and management of such person as the ¹[Provincial Government] may appoint.

(2) If cause is not shown to the satisfaction of the ¹[Provincial Government] within the period specified in the order issued under sub-section (1), the ¹[Provincial Government] may, by order, direct that the drainage works, sewerage works, lighting works or water works with all plant, fittings and appurtenances thereof shall be handed over for such period as it may fix to the control and management of such person as it may appoint. During the period so fixed the complete control and management of the drainage works, sewerage works, lighting works or water works, as the case may be, shall be vested in the person so appointed, who shall engage such establishment for the purpose of maintaining and working such drainage works, sewerage works, lighting works or water works as the ¹[Provincial Government] may from time to time approve. The cost of such establishment and of all materials, implements, coal, stores and every thing necessary for the maintenance and working of the works shall be paid within such period as may be fixed by the ¹[Provincial Government] from the conservancy-rate, lighting-rate or water-rate, as the case may be, and may direct that such rate shall, for this purpose, be increased but not so as to exceed the *maximum* prescribed in that behalf.

(3) If the cost is not so paid, the District Magistrate may proceed as in section 551.

²(4) No action shall be taken under the foregoing provisions of this section in relation to a Cantonment Authority or the Port Authority of a major port without the previous approval of the Central Government.

¹See foot-note 3 on p. 85, *ante*.

²Sub-section (4) was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 286, 287.)

General provisions relating to the laying and connecting of pipes, sewers and the like.

286. (1) The Commissioners may carry any pipe, drain, sewer or channel of any kind for the purpose of providing or of carrying out and establishing or maintaining a system of drainage, sewerage, lighting or water-supply through, across, under or over any street or place, laid out as, or intended for, a street, and after giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever, situate within the limits of the municipality, and, for the purpose of introduction, or distribution of light or water, or for the outfall of water, or for the removal or outfall of sewage, or for drainage outfall, without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, sewer or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used :

Power of Commissioners to lay or carry pipes, drains or sewers through private land.

Provided that no annoyance to the public more than is necessarily caused by the proper execution of the work is created by any such operation : and

Provided, further, that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him through or in consequence of any such operations.

(2) Whenever the ¹[Provincial Government] has sanctioned any works without the limits of any municipality for bringing light or water into such municipality or for draining or disposing of the sewage of such municipality, the Commissioners may exercise all the powers which by this Act they may exercise within the municipality, in the construction, maintenance and repair of such work throughout the line of country in which such works are situated or through which they are to run.

287. In the event of any pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over, or up the side of any building, such pipe, drain, sewer or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of any substantial interference with any such right to such enjoyment.

Pipes, drains or sewers laid or carried above surface of ground.

¹See foot-note 3 on p. 85, *ante*.

*(Chapter VIII.—Water-supply, Lighting, Drainage and
Sewerage Systems.—Secs. 288—293.)*

Previous notice
to be given.

288. Except in cases to which section 293 relates, the Commissioners shall cause not less than one month's notice in writing to be given to the owner or any occupier before commencing any operations under section 286.

Power to
permit
connection to
houses and lands.

289. (1) Subject to the prescribed conditions and restrictions and to such terms as the Commissioners may from time to time determine, the Commissioners at a meeting may—

- (a) on the application of the owner or occupier of any house or land paying the water-rate or lighting-rate, as the case may be, make or cause, or permit to be made, communication or connection from any main, or distribution pipe, belonging to the Commissioners for the purpose of leading water or gas to such house or land, or
- (b) on the application of the owner or occupier of any house or land make, or cause or permit to be made, any connection or communication to such house or land from any drain, sewer or channel constructed or maintained by or vested in the Commissioners.

(2) The Commissioners at a meeting may require the amount necessary for the execution through their own agency of any work under this section to be paid or deposited before such work is executed by them.

Power to make
or require connec-
tions in certain
cases.

290. In any case in which a service-pipe from a main supplies water to two or more holdings, the Commissioners may, by written notice, require the owner of such holdings to lay down separate service-pipes for the separate holdings, and the expense of so doing shall be borne by all such owners in such proportions as may be determined by the Commissioners.

Power to estab-
lish meters and
the like.

291. The Commissioners may establish meters for the purpose of testing the quantity or quality of any gas supplied to the house or land of any person or to or for the use of any person or business.

Attachment of
meters.

292. For the purpose of measuring and recording the amount of water consumed, the Commissioners may fix a meter at a convenient point between the holding of the consumer and the municipal main.

Power to enter
premises.

293. (1) Any officer authorized in this behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas or other installation and for taking readings of meters connected therewith.

of 1932.]

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 294—297.)

(2) If such officer at any such time is refused admittance into such house or land for the purposes aforesaid, or is prevented from making such examination, the Commissioners may forthwith cut off the supply of gas or water, as the case may be, from such house or land :

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated to women, unless reasonable notice in writing and opportunity is given to enable the women to remove to some part of the premises where their privacy may be preserved.

294. Whenever water or gas is supplied under this chapter through a meter, it shall be presumed that the quantity or quality indicated by the meter has been consumed until the contrary is proved.

Presumption as to correctness of meter.

295. The expense of providing, attaching and replacing a meter shall be borne by the person requiring the supply or, if the service-pipe or connection has been laid down or made before the commencement of this Act, by the owner of the house or land, except in the case of a special agreement to the contrary between the owner and the occupier. Such expense shall be recovered in one or more instalments according as the Commissioners think proper :

Cost of providing, attaching and replacing meter.

Provided that the Commissioners shall bear the cost of maintaining meter in good order and replacing a meter which is out of order or under repair owing to an inherent defect and not owing to its having been tampered with.

296. When any meter attached to the service-pipe or connection of any house or land is out of order or under repair, the Commissioners shall forthwith replace it by another meter.

Commissioners to replace damaged meter.

297. (1) If the owner or occupier of any house or land to which water or gas is supplied through a meter desires to have the meter tested, he may send a written application to the Commissioners, and such application shall be accompanied by a fee of two rupees.

Testing of meter.

(2) Upon receipt of any such application and fee the Commissioners shall forthwith cause such meter to be tested at a time and place to be specified in a notice to be served upon such owner or occupier.

(3) If such meter is found, upon being so tested, to be incorrect by more than two *per cent.*, the said fee shall be returned to the person who sent it.

*(Chapter VIII.—Water-supply, Lighting, Drainage and
Sewerage Systems.—Secs. 298—302.)*

**Fraud in
respect of
meter.**

298. (1) No person shall fraudulently—

- (a) alter the index to any meter, or prevent any meter from duly registering the quantity or quality of water or gas supplied, or
- (b) abstract or use water or gas before it has been registered by a meter, set up for the purpose of testing the quantity or quality of the same.

(2) Where there has been any such alteration, prevention, abstraction or use the existence of artificial means under the control of the consumer for causing any such alteration, prevention, abstraction or use shall be evidence that the consumer has fraudulently effected the same.

**Injuring meter
or fittings.**

299. No person shall wilfully or negligently injure or suffer to be injured any meter or any of the fittings of any meter.

**Maintenance
of supply of
water.**

300. The Commissioners at a meeting shall from time to time determine what supply of water for domestic purposes shall be maintained in their service-pipes and mains, and during what hours such supply shall be continued.

**Supply for
business.**

301. (1) The Commissioners at a meeting may supply and may at any time after giving reasonable notice cease to supply water for purposes other than domestic purposes.

(2) For all water supplied under sub-section (1) payment shall be made at such rates and on such conditions as the Commissioners at a meeting may from time to time prescribe.

(3) No person shall, without the written permission of the Commissioners, use, for other than domestic purposes, water supplied under this chapter for domestic purposes.

**Free supply of
certain quantity
of water for
domestic
purposes.**

302. (1) The occupier of every premises to which water is supplied by the Commissioners under this chapter shall be entitled to have, for each rupee paid quarterly as the water-rate on account of such premises and free of further charge such quantity of water per quarter for domestic purposes as the Commissioners at a meeting may from time to time prescribe.

(2) All water supplied in excess of the free allowance to which an occupier is entitled under sub-section (1) shall be paid for by him at a rate to be fixed from time to time by the Commissioners at a meeting.

(3) If such premises are ordinarily occupied by two or more persons holding in severalty, the owner shall be liable for water supplied in excess as referred to in sub-section (1); but such owner shall be entitled to recover rateably from the several occupiers any amount so paid.

of 1932.]

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Sec. 303.)

(4) Every incoming or outgoing occupier of any metered premises shall at least three clear days before entering into the occupation of or vacating such premises, as the case may be, cause a written notice to be served upon the Commissioners stating the date on which he intends to occupy or vacate the premises and requiring the Chairman to cause the meter to be read for the determination of the liability, if any, for any excess consumption of filtered water on the date of such occupation or the date of such vacation of the premises, as the case may be.

(5) Upon receipt of such notice the Chairman shall cause the meter to be read and furnish such occupier with a statement of such meter reading.

(6) The outgoing occupier shall ordinarily be liable to pay for any excess supplied up to the date of his vacating the premises ;

and the incoming occupier's liability for any excess consumption of filtered water shall ordinarily accrue from the commencement of his occupation :

Provided that where no written notice is delivered to the Commissioners under sub-section (4), the Commissioners shall be entitled to realise from such incoming occupier the full proportionate amount of the charges for excess water consumed, on the basis of the next quarterly or other reading of the meter made after the occupation of the incoming occupier, or such less amount as the Commissioners may think fit, regard being had to the number of days in any quarter during which the premises were occupied by such incoming occupier, the number of inmates during that period and the amount of free allowance to which such occupier may be entitled under sub-section (1).

303. (1) Before a connection for the supply of water from the distribution mains of the Commissioners to any premises is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said premises to be inspected by an officer appointed by them in this behalf.

Inspection of works and pipes before connection.

(2) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(3) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner a connection with the Commissioners' service pipes shall not be permitted.

(4) Notwithstanding anything contained in this section, if at any time after a certificate has been granted under

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 304—306.)

sub-section (3) the Commissioners are satisfied that any work, pipe or fittings is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the premises, to alter or add to them at his own cost.

Permission to person outside the municipality to take water.

304. The Commissioners at a meeting may with the sanction of, and on such terms (if any) as may be approved by the ¹[Provincial Government], supply water to a local authority or other person outside the municipality.

Water not to be taken out of municipality or wasted.

305. No person—

- (i) shall take, or cause to be taken for use outside the limits of the municipality water supplied by the Commissioners, without the permission of the Commissioners given under section 304 or in contravention of any conditions which they may prescribe ;
- (ii) being the occupier of any premises to which water is supplied by the Commissioners under this chapter, shall, from negligence or other circumstances under the control of the said occupier, allow the water to be wasted, or allow the pipes, works or fittings for the supply of water in his premises to be out of repair so as to cause waste of water ;
- (iii) shall otherwise cause waste of water supplied by the Commissioners ;
- (iv) shall unlawfully flood, draw off, divert or take water from, any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied.

Owner to bear the cost of keeping works in repair.

306. Except in the case of a special agreement to the contrary, the owner of any premises shall bear the expenses of keeping all works connected with the supply of water to such premises in substantial repair, and if he fails to do so, the occupier may, after giving the owner three days' notice in writing, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to the owner in respect of such premises :

Provided that nothing in this section* shall affect the liabilities of parties under leases executed previous to the extension of this chapter to the municipality in which the said premises are situated.

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 307—309.)

307. No work for introducing a supply of water to any premises shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner.

Estimate and specification of works to be sent.

308. The Commissioners at a meeting may, if they think fit, take charge of all communication-pipes and fittings of any existing private water-works connected with the municipal water-supply up to and including the stop-cock nearest the supply-main for the said works, and such communication-pipes and fittings shall thereafter vest in and be maintained at the expense of, the Commissioners as municipal water-works.

Power to take charge of private connections.

309. (1) Notwithstanding anything contained in this chapter the Commissioners may cut off the connection between any of their water-works and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely:—

Power to cut off or to turn off supply of water to premises.

- (a) if the premises are unoccupied ; or
- (b) if, after receipt of a written notice from the Commissioners requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water or to permit the same to be used in contravention of this Act or any rule or by-law, made thereunder ; or
- (c) if the occupier of the premises contravenes section 298, section 299, sub-section (3) of section 301 or section 305 ; or
- (d) if any pipes, taps, works or fittings connected with the supply of water to the premises be found, on examination by any officer of the Commissioners authorised by them in this behalf, to be out of repair to such an extent as to cause so serious a waste or contamination of water that in the opinion of the Chairman immediate prevention is necessary ; or
- (e) if the use of the premises for human habitation has been prohibited under section 366, from the date from which the premises are to be vacated under the order of the Magistrate ; or
- (f) if there is any water-pipe situated within the premises to which no tap or other efficient means of turning the water off is attached ; or

(Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 310, 311.)

- (g) if by reason of a leak in the service-pipe or fitting damage is caused to the public street and immediate ¹[prevention is] necessary : *

Provided as follows :—

- (i) water supplied for flushing privies or urinals shall not be cut off or turned off ;
 (ii) water shall not be cut off or turned off in any case referred to in clause (e) unless written notice of not less than forty-eight hours has been given to the occupier of the premises.

(2) The expense of cutting off the connection or of turning off the water and of restoring the same, as determined by the Commissioners in any case referred to in sub-section (1), shall be paid by the owner or occupier of the premises :

Provided that no charge for such expense shall be made in the cases mentioned in clause (a) and clause (e) of the said sub-section.

(3) No action taken under or in pursuance of this section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Application of
the Indian
Electricity
Act, 1910.

* 310. Notwithstanding anything in this chapter all matters relating to the generation, transmission, supply or use of electrical energy in a municipality shall be regulated by the provisions of the Indian Electricity Act, 1910.

IX of
1910.

Power to make
les.

311. The ²[Provincial Government] may make rules to regulate—

- (a) the preparation of plans and estimates for water-works or for the introduction of a system of lighting by electricity, or gas, or of drainage or sewerage, where such works or system are or is to be partly or wholly constructed or carried out at the expense of the Commissioners ;
 (b) the power of the Commissioners or the ²[Provincial Government] to accord sanction to such plans and estimates ;
 (c) the publication in the ²[Official Gazette] of the parti-

Page 216—

Put an asterisk at the end of clause (g) of sub-section (1) of section 309 and insert the following footnote after footnote 3, namely :—

¹In the application of the Act to the district of Darjeeling, at the end of clause (g)

Page 216—

Put an asterisk against section 310 and insert the following footnote after footnote 3, namely :—

²In the application of this Act to the district of Darjeeling, in section 310, for the word "chapter" substitute the word "Act."

(Substituted by paragraph XIV of notification No. 3435E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

Part I, pages 487-488.

[No. 38, dated the 6th December, 1945.]

of 1932.]

*(Chapter VIII.—Water-supply, Lighting, Drainage and
Sewerage Systems.—Sec. 311.)*

- (d) the size and nature of water-works, mains, pipes, drains, sewers or channels to be constructed or laid by the Commissioners for the supply of water or gas, or for drainage or sewerage ;
- (e) the maintenance of municipal water-works and of pipes and fittings in connection therewith ;
- (f) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and all pipes, stand-pipes, stop-cocks, taps, hydrants and other fittings, whether within or outside any premises, that may be prescribed or necessary for the regulation of the supply and use of water or gas ;
- (g) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited ;
- (h) the periodical analysis by a qualified analyst of the water supplied by the Commissioners ;
- (i) the conservation of, and the prevention of injury or contamination to, sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality ;
- (j) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners shall or may be constructed, altered or maintained, the fees to be levied for such connections and the person by whom they shall be paid, and the agency to be employed for such construction, alteration or maintenance ;
- (k) the rates at which the charges for water or gas supplied may be levied by the Commissioners and the use, maintenance and testing of meters and the rebate, if any, to be allowed where a meter is found to be defective ;
- (l) the regulation of all matters and things connected with the supply and use of water or gas, and the turning on and turning off and preventing the waste of water or gas ; and
- (m) any other matter relating to the supply of water or gas or of drainage or sewerage in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the ¹[Provincial Government], necessary :

¹See foot-note 3 on p. 85, *ante*.

[Ben. Act XV

(Chapter IX.—Buildings.—Secs. 312, 313.)

Provided that in any rules made under this section regarding the construction or carrying out of any works for the supply of water or gas, or for drainage or sewerage by the Public Health Department provision shall be made that the Commissioners of the municipality concerned shall have an opportunity of seeing the terms of the contract for the execution of works, before it is executed.

* CHAPTER IX.

Buildings.

Application of Schedule VI.

Application of
Schedule VI,
etc.

312. (1) The ¹[Provincial Government] may, by notification declare that Schedule VI or any part thereof shall be in force in such municipalities as may be specified in the notification and may, on the application of the Commissioners of a municipality, cancel or modify such notification in respect of any municipality so specified.

(2) The provisions contained in sections 315, 317 to 327 and 329 shall not apply to any municipality, unless and until they have been extended thereto by a notification issued by the ¹[Provincial Government] when Schedule VI or any part thereof is brought into force under sub-section (1):

Provided that in the case of any municipality to which the provisions of Part VI of the Bengal Municipal Act, 1884, corresponding to the provisions of sections 315, 317 to 327 and 329 are in force immediately before the commencement of this Act, all the said sections shall be in force in such municipality without being expressly extended thereto.

Ben. Act
III of
1884.

Building-sites and erection of buildings.

213. No piece of land shall be used as a site for the
Pages 218-220—

Put an asterisk against the head "Chapter IX" on page 218, and insert the following footnote after footnote 1, namely:—

*In the application of the Act to the district of Darjeeling, in Chapter IX for the word and letters "Schedule VI," wherever they occur, substitute the words and letters "Schedule VI or Schedule VI(A)."

[Substituted by paragraph XVIII(ii) of notification No. 3435E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Part I, pages 487-488.]

[No. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter IX.—Buildings.—Secs. 314—316.)

314. If any question arises as to what, for the purposes of this Act, shall be deemed to be the site of any proposed masonry or framed building, the Commissioners at a meeting shall determine the same, and their decision shall be final.

Commissioners to determine site of proposed masonry building.

315. (1) Save with the special permission of the Commissioners at a meeting, no building (other than a hut) shall be erected unless—

Masonry building not to be erected without special

- (a) the site of such building abuts on a public street, or a projected public street or a private street duly sanctioned and constructed in accordance with the provisions of this Act, or existing before the commencement of this Act, or
- * (b) there is access to the building from any such street by a passage or pathway, appertaining to such site, and not less than six feet wide at any part.

Page 219—

Put an asterisk against clause (b) of sub-section (1) of section 315, and insert the following footnote, namely:—

*In the application of the Act to the district of Darjeeling, in clause (b) of sub-section (1) of section 315, for the words "six feet" substitute the words "four feet."

(Substituted by paragraph XV of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

namely, if the building is wholly surrounded by a wall, and at a distance of at least ten feet from, the nearest adjacent building;

- (b) any building erected or intended to be erected by, or with the sanction of the Commissioners, for use solely as a temporary hospital for the reception and treatment of persons suffering from any infectious or contagious disease; and
- (c) any hoarding or like means of protection (other than a masonry wall) which the owner of any premises certifies to the Chairman not less than seven days after its erection to have been erected for the purpose of preventing the threatened acquisition of any easement over his own premises or any portion thereof, provided that the stability of such hoarding or other means of protection is certified by the Chairman.

*(Chapter IX.—Buildings.—Secs. 317—321.)**Application for sanction.*

Application to erect building to be submitted in the prescribed form.

317. Every person who intends to erect a building shall first submit an application in the form prescribed in Schedule VI to the Commissioners together with such plans, specifications and other particulars as may be prescribed in that schedule or in any rule or by-law made in this behalf.

Permission to execute work when to be given or refused.

318. (1) Within thirty days, or in the case of huts, within fifteen days after the receipt of any application made under section 317, or of any information or documents, which the Commissioners may reasonably require the applicant to furnish before deciding whether permission shall be granted to execute any work under the aforesaid section, the Commissioners shall, by written order, either—

- (a) grant permission conditionally or unconditionally to execute the work, or
- (b) refuse, on one or more of the grounds mentioned in section 322, to grant such permission.

(2) When the Commissioners grant permission conditionally under clause (a) of sub-section (1), they may in regard thereto impose such conditions, consistent with this Act, as they may think fit.

(3) Where permission has been refused under sub-section (1), an appeal shall lie to the Commissioners at a meeting, provided that no order passed by the Commissioners at a meeting in respect of such appeal shall relax the provisions of section 322 or of Schedule VI or of any rule or by-law made under this Act.

Permission to be implied if Commissioners default in coming to a decision.

319. If within the period prescribed by section 318 the Commissioners have neither granted nor refused to grant permission to execute any work, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of Schedule VI or of any rule or by-law applying thereto.

Notice after completion of work.

320. Within one month after the completion of the erection of a new building (other than a hut) the owner of the building shall send to the Commissioners a written notice of the fact of such completion.

Inspection of work requiring sanction.

321. (1) The Chairman or any other person authorized by the Commissioners in this behalf may, at any time, and without notice, inspect any work in respect of which an application is required under section 317—

- (a) while under construction, or
- (b) within one month of the receipt of the notice of completion sent under section 320, or, in default of such notice, at any time after completion.

of 1932.]

(Chapter IX.—Buildings.—Sec. 322.)

(2) If, on making any inspection under sub-section (1) the Chairman or other person so authorized finds that the building inspected is being or has been erected—

- (a) subject to the provisions of section 319, otherwise than in accordance with the plans thereof which the Commissioners have approved, or
- (b) in such a way as to contravene any of the provisions of this Act or of Schedule VI or of any rule or by-law made in this behalf,

the Chairman may, by written notice, require the owner of the building either to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, as the case may be, or to appear before the Commissioners at a meeting and show cause why such alterations should not be made.

(3) If such owner does not appear and show cause under sub-section (2) he shall be bound to make the alterations specified in such notice.

(4) If such owner appears and shows cause under sub-section (2), the Commissioners shall, after hearing him, either—

- (a) cancel the notice issued under that sub-section, or
- (b) confirm the same, subject to such modifications (if any) as they may think fit.

322. The only grounds on which permission to erect a building may be refused are the following, namely :—

Grounds on which permission to erect a masonry building may be refused.

- (a) that the work, or any of the particulars comprised in the plans or specifications would contravene some specific provision of this Act or of Schedule VI or of some specific rule or by-law made in this behalf ; or
- (b) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule VI or in any rule or by-law made in this behalf ; or
- (c) that any of the documents referred to in Schedule VI or in any rule or by-law made in this behalf have not been signed in the manner prescribed ; or
- (d) that any information or documents required by the Commissioners under this Act or Schedule VI or under any rule or by-law made in this behalf has or have not been duly furnished ; or

(Chapter IX.—Buildings.—Secs. 323—325.)

- (e) where the provisions of the Calcutta Improvement Act, 1911, have been extended to any municipality that, in the case of a new building falling within the street alignment or building-line of a public street projected under section 63 of the Calcutta Improvement Act, 1911, the permission of the Chairman of the Board of Trustees for the Improvement of Calcutta has not been obtained ; or
- (f) that the applicant has not satisfied the Commissioners in regard to any objections which may have been taken on any of the grounds mentioned in this section, to the grant of the said permission.

Power as to
inflammable
structures.

323. (1) The Commissioners at a meeting may, by public notice, direct that, within certain limits to be fixed by them, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats, leaves or other highly inflammable materials without their consent in writing.

(2) The Commissioners at a meeting may, at any time by written notice, require the owner of any building which has an external roof or wall made of any such materials as aforesaid to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the Commissioners or before the issue of such public notice, if any :

Provided that in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the Commissioners, they shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

Power to Com-
missioners to
cancel permis-
sion on the
ground of
material
misrepresentation
by applicant.

324. If, at any time permission to erect any masonry or framed building has been given, and the Commissioners at a meeting are satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application made under section 317, or in the plans, elevations, sections or specifications submitted therewith in respect of such building, they may cancel such permission, and any work done thereunder shall be deemed to have been done without permission.

Duration and
expiry of per-
mission to erect
a building.

325. (1) A permission to erect a building, granted under this chapter shall, unless it is renewed on an application made to the Commissioners for this purpose, continue only for one year after the date on which it is granted, unless the work of erection has been commenced within that

of 1932.]

(Chapter IX.—Buildings.—Sec. 326.)

period and in any case shall not continue for a period longer than two years from the said date unless it is so renewed.

(2) Any person who erects a building or continues the work of erection of a building, when the permission granted under this chapter has expired, shall be deemed to erect such building or to continue such work without sanction.

Application of Act to alterations of, and additions to, buildings.

326. (1) The provisions of—

- (a) this chapter,
- (b) Schedule VI, and
- (c) any rules or by-laws made under this Act,

Application of
Act to altera-
tions of, and
additions to,
buildings.

relating to the erection of buildings, shall also apply to every material alteration of, or addition to, any building, but shall not apply to necessary repairs not involving any of the works which constitute a material alteration or addition.

(2) An alteration or addition in or to a building shall for the purposes of this chapter and of Schedule VI and of any rule or by-law, be deemed to be material if—

- (a) it increases or diminishes the height of, the area covered by, or the cubical capacity of the building, or any part thereof, or reduces the height, area, or cubical capacity of any room in the building below the minimum prescribed in Schedule VI, or in any rule or by-law ; or
- (b) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene ; or
- (c) it converts into a place for human habitation a building or part of a building originally constructed for other purposes ; or
- (d) it is an alteration or addition declared by Schedule VI or by any rule or by-law made in this behalf to be a material alteration or addition.

(3) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position, safety, stability, use, sanitary condition or dimensions of a building or room, such question shall be referred to the Commissioners at a meeting and the decision of the Commissioners shall be final.

*(Chapter IX.—Buildings.—Secs. 327—329.)***Rules.**

327. (1) In alteration of, addition to, or cancellation of Schedule VI, the ¹[Provincial Government] may make rules—

- (a) for the regulation or restriction of the use of land as sites for building, and
- (b) for the regulation and restriction of building and of alterations in, or additions to, buildings.

(2) When Schedule VI has been so altered, added to or cancelled, any reference made in this Act to the said schedule shall be construed as a reference to the schedule as amended under sub-section (1) or, if the schedule has been cancelled, to the rules substituted therefor.

Special provisions in respect of less advanced municipalities.

328. (1) The Commissioners of any municipality to which the provisions of Schedule VI are not extended under section 312 shall at a meeting, if the ¹[Provincial Government] so requires, provide by means of by-laws for the control of the erection of buildings and of material alterations and additions to buildings to give effect to the provisions of this Act and of that schedule in this behalf to such extent as local circumstances permit and subject to such modifications as local circumstances may require.

(2) Where the provisions of Schedule VI are extended only in part to any municipality the Commissioners shall, at a meeting, if the ¹[Provincial Government] so requires, regulate by means of by-laws the matters that are regulated by that part of Schedule VI which is not extended to such municipality.

Powers to make by-laws regulating buildings.

329. (1) The Commissioners of a municipality to which the provisions of Schedule VI have been extended under this Act in whole or in part may, and when required by the ¹[Provincial Government] shall, make at a meeting by-laws, consistent with this Act and Schedule VI (or the part thereof extended to the municipality) applicable to building-sites or to buildings generally or to any class of buildings within the whole or any part of the municipality, and may by such by-laws—

- (a) determine the plans, specifications and other documents or particulars to be furnished with any application made for permission to construct, add to or alter house-drains, privies or urinals ;
- (b) declare an alteration or addition of any specific description to be a material alteration or addition although not falling within the scope of clauses (a), (b) or (c) of sub-section (2) of section 326 ;

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter IX.—Buildings.—Sec. 329.)

- (c) prescribe that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specifications shall be obtainable from the Commissioners or from an agency prescribed by the Commissioners ;
- (d) prescribe the type or description of buildings which may or may not, and the purposes for which a building may or may not, be erected in any specified area or areas ;
- (e) prescribe that builders and surveyors shall be licensed and that the erection of buildings shall not be permitted except by licensed builders and surveyors ;
- (f) prescribe the fees, to be paid by builders and surveyors for obtaining a license and the qualifications to be possessed by them ; and
- (g) prescribe, with reference to the erection of buildings, all or any of the following matters :—
 - (i) the materials and method of construction to be used for external and party walls, roofs and floors ;
 - (ii) the regulation of sites for buildings, and the materials and method of construction of fireplaces, chimneys, drains, privies, urinals and cesspools ;
 - (iii) the ventilation and flushing of drains, latrines, urinals and cesspools, and the provision of access thereto from streets, and where a sewerage system has been provided, the connection of service privies with a sewer and the method of the connection ;
 - (iv) the proportion of any building-site, which shall not be built over, the amount of space to be left at the sides and back of any building and the area of courtyards in proportion to the floor area of rooms abutting thereon ;
 - (v) the height of any building or portion of a building in relation to the width of the street or streets on which it abuts and to the space left open at the back of the building and forming a part of the site, and the height of any building or portion of a building abutting on a courtyard ; the level, drainage and paving of courtyards ;
 - (vi) the width of foundation, height of plinth, and stability of structure ;

(Chapter IX.—Buildings.—Sec. 330.)

- (vii) the minimum floor area, minimum height, and ventilation of rooms used or intended to be used for human habitation ;
- (viii) any other matter affecting the ventilation or sanitation of the building ;
- (ix) the regulation by specific rules of special classes of buildings in any of the above matters ;
- (x) the laying out of huts in a *bustee* in accordance with alignment lines, prescribed and demarcated on the ground ;
- (xi) the distance to be kept open between huts and alignment lines ;
- (xii) the means to be provided for egress from public buildings in case of fire ;
- (xiii) regulating in any manner not specifically provided for in this Act, the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature (other than a *hogla* or similar kind of temporary shed erected on ceremonial festive occasions), on any land within the limits of the municipality ; and
- (xiv) special rules in respect of any of the foregoing matters for any particular type or class of buildings which are used or which it is intended to use for any particular purpose.

(2) By-laws made by the Commissioners of a municipality to which the provisions of Schedule VI have not been extended or have only been extended in part, shall be subject to the approval of the ¹[Provincial Government] and may provide for any of the matters specified in clauses (a) to (g) of sub-section (1) and also for the regulation of building-sites within the municipality, but shall not be inconsistent with any portion of this Act which applies to such municipality or with any portion of Schedule VI or any rule made thereunder which has been extended thereto.

Order for demolition or alteration of buildings in certain cases.

330. (1) If the Commissioners are satisfied—

(a) that the erection of any building—

- (i) has been commenced without obtaining their written permission under section 318 otherwise than under the provisions of section 319, or

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter IX.—Buildings.—Sec. 330.)

- (ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or after such permission has been lawfully withdrawn, or
- (iii) is being carried on or has been completed in breach of any provision contained in this Act or in Schedule VI or in any rules or by-laws made in this behalf or of any condition, modification, direction or requisition lawfully given or made under this Act or Schedule VI or under such rules or by-laws, or
- (b) ~~that~~ any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or Schedule VI or in any rules or by-laws made in this behalf, or
- (c) that any alterations required by any notice issued under sub-section (2) of section 321, have not been duly made,

they may, in addition to any prosecution that may be instituted under this Act, apply to a Magistrate and such Magistrate may make an order directing that such erection, alteration, or addition, as the case may be, or so much thereof as has been executed unlawfully as mentioned in clauses (a), (b) or (c), or that any structure specified in the application or plans or specification submitted under section 317 as a structure to be demolished or altered before the new building was erected or the material alterations or additions were made shall—

- (i) be demolished by the owner thereof or altered by him to the satisfaction of the Commissioners, as the case may require, or
- (ii) be demolished or altered by the Commissioners at the expense of the said owner.

(2) The Magistrate may make any order under this section notwithstanding the fact that a valuation of such building has been made by the Commissioners under Chapter V for the assessment of any rate or rates, but shall not make any such order without giving the owner of the building to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence.

(Chapter IX.—Buildings.—Sec. 331.)

Order for
demolition or
alteration of
buildings in
other cases.

331. (1) In any of the following cases, namely :—

- (a) if the owner of any building erected or added to between a street alignment and the building-line fails to remove such building or addition when called upon to do so under section 218, or
- (b) if any person who makes any additions to a building in pursuance of an agreement executed under sub-section (4) of section 218, fails to remove such additions when called upon to do so, or
- (c) if the owner of any building erected or added to under the proviso to sub-section (1) of section 218, fails to remove such building or addition when called upon to do so, or
- (d) if, within the period prescribed in any notice requiring the owner or occupier of a building to comply with any condition on which the erection of any verandah or other projection was permitted under sub-section (2) of section 235, such condition is not complied with, or
- (e) if, within the period prescribed in any notice issued under sub-section (4) of section 235, requiring the owner or occupier of a building to remove a verandah or other projection, the same be not duly removed, or
- (f) if, within the period prescribed in any notice issued under sub-section (2) of section 323, requiring the owner of a building to remove or alter an external roof or wall made of inflammable material, the same be not duly removed or altered, or
- (g) if the owners or occupiers neglect to execute any works or to take any measures required by any notice issued on them under sections 263, 364, 365, 367 or 380,

the Commissioners may in addition to any prosecution that may be instituted under this Act, apply to a Magistrate, and such Magistrate may make an order directing that the projection, building, portion of the building, block of buildings, verandah, fixture, additions, roof or wall, or huts, as the case may be, shall—

- (i) be demolished by the owner thereof or altered by him to the satisfaction of the Commissioners, as the case may be, or
- (ii) be demolished or altered by the Commissioners at the expense of such owner.

of 1932.]

(Chapter IX.—Buildings.—Chapter X.—Bustees.—
Secs. 332—334.)

(2) The Magistrate may make any order under this section notwithstanding the fact that a valuation of such building has been made by the Commissioners under Chapter V for the assessment of any rate or rates, but shall not make any such order without giving the owner of the structure to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence.

332. Notwithstanding anything contained in section 532 or section 533 no prosecution for an offence referred to in section 330 or section 331 shall be instituted without the order or consent of the Commissioners at a meeting and the Commissioners before passing such order or giving such consent shall give to the owner or occupier of the building an opportunity of showing cause why such prosecution should not be instituted.

Institution of prosecutions for offences referred to in section 330 or section 331.

333. (1) In any case in which the erection of a new building, or any other work referred to in section 330 or section 331, has been commenced, or, is being carried on unlawfully as mentioned in those sections, the Commissioners may, by written notice, require the person carrying on such erection or other [unlawful] work to discontinue the same, pending the decision of a Magistrate on an application to be made to him under that section.

Power of Commissioners to stop erection of new buildings in certain cases.

(2) If any notice issued under sub-section (1) is not duly complied with, the Commissioners may, with the assistance of the police if necessary, take such steps as they may deem needful in order to stop the continuance of the unlawful work.

(3) If it appears to the Commissioners that it is necessary in order to prevent the continuation of the unlawful work, to depute any police or municipal officer to watch the premises, the cost of providing the same shall be borne by the person to whom the said notice was addressed.

CHAPTER X.

Bustees.

Preliminary.

334. The provisions contained in this chapter shall not apply to any municipality, unless and until they have wholly or in part, been extended thereto by a notification issued by the [Provincial Government] in this behalf :

Application of Chapter X.

¹This word was substituted for the word "unlawfully" by the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

²The word "been" was omitted, *ibid.*

³See foot-note 3 on page 85, *ante*.

[Ben. Act XV

(Chapter X.—Bustees.—Secs. 335, 336.)

Provided that in the case of any municipality to which the provisions of Part VI of the Bengal Municipal Act, 1884, corresponding to any of the provisions of this chapter are in force immediately before the commencement of this Act, all the said provisions of this chapter shall be in force in such municipality without being expressly extended thereto.

Ben. Act
III of
1884.

Power to Com-
missioners to
define limits of
bustee.

335. (1) The Commissioners at a meeting may define the external limits of any *bustee*, and may from time to time alter such limits.

(2) None of the powers conferred by any of the following sections of this chapter shall be exercised in respect of—

- (a) any *bustee* the total area of which, as comprised within the limits defined under sub-section (1), is less than two *bighas*, or
- (b) any masonry building existing in a *bustee* at the time when a standard plan is approved or alignments are prescribed under the provisions of this chapter for such *bustee* as the case may be.

Sanitary measures with regard to bustees.

Power of Com-
missioners as to
inspection of
huts.

336. (1) If it appears to the Commissioners at a meeting that the condition of any *bustee* is insanitary or attended with risk of disease to the inhabitants of the neighbourhood, by reason of the manner in which the huts are constructed or crowded together, or of want of drainage, the impracticability of scavenging or for any other reason, they may after giving notice to the owners of the *bustee* cause the locality to be inspected by two persons appointed in this behalf, one of whom shall be registered medical practitioner or a person holding the diploma of Public Health and the other an engineer.

(2) The said persons shall forthwith—

- (a) sign and submit a written report on the insanitary condition of the said *bustee*,
- (b) annex to the report a plan approved by them as the standard *plan* of such *bustee*, and
- (c) specify in a schedule to be attached to the said report, as the improvements considered necessary to remove or abate the insanitary condition of the *bustee*,—
 - (i) the huts which should, wholly or in part, be removed;
 - (ii) the streets, passages, drains and sewers which should be constructed;

of 1932.]

(Chapter X.—Bustees.—Secs. 337, 338.)

- (iii) the means of lighting, water-supply, common bathing arrangements and common privy accommodation to be provided for the use of tenants ;
- (iv) the tanks, wells and low lands which should be filled up ; and
- (v) any other improvements they consider necessary in order to remove or abate the insanitary condition of the *bustee*.

A report (together with the schedule annexed thereto) made and signed under this section shall be sufficient evidence of the result of such inspection.

337. On receipt of the said report, the Commissioners at a meeting after hearing the objections (if any) of the owners of the *bustee* in respect of which the report has been made may approve the plan and schedule after making such modifications (if any) therein as they may think fit and may require the said owners or the owners or occupiers of the huts referred to in sub-clause (i) of clause (c) of sub-section (2) of section 336, or both of the owners of the *bustee* and the owners and occupiers of the huts, to carry out and execute, within a time to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid schedule or any portion thereof, respectively.

Power to serve notice.

338. When any improvements required by a notice under section 337 are carried out by the Commissioners under the provisions of this Act, all expenses incurred thereby, including such reasonable compensation as the Commissioners at a meeting may think fit to pay the owners or occupiers of huts removed, shall be paid by the owners of the *bustee*, to the Commissioners, and shall constitute a charge upon such *bustee*:

Payment of expenses incurred in carrying out improvements.

Provided that, notwithstanding anything contained elsewhere in this Act, if it appears to the Commissioners at a meeting that any such owner is unable, by reason of poverty, to pay such expenses, or any portion thereof, in the case of expenses relating to work, which should in the opinion of the Commissioners have been done by the owners or occupiers of huts within the *bustee*, they may order the same or any portion thereof to be paid out of the Municipal Fund, and in the case of expenses, which should be paid by the owner of the *bustee*, they may order the same or any portion thereof to be advanced out of the Municipal Fund, but thereafter to constitute a charge upon such *bustee*.

(Chapter X.—Bustees.—Secs. 339—341.)

Disposal of
material of huts
pulled down.

339. (1) If in carrying out any improvements required by a notice under section 337, the Commissioners cause any hut or portion of a hut to be pulled down, they shall—

- (a) cause the materials of such hut or portion of a hut to be given to the owner of the hut, if such owner elects to take them, or
- (b) if the owner does not elect to take the materials, or if the owner be unknown or the title to the hut be disputed, cause such materials to be sold, and hold in deposit the proceeds of the sale, together with any sum awarded as compensation under section 338.

(2) Any amount held in deposit under clause (b) of sub-section (1) shall be so held by the Commissioners until any person obtains an order from a competent Court for the payment to him of such amount.

Power to
purchase or
acquire
masonry
buildings or
lands in bustee.

340. (1) Any masonry building in a bustee, and any land appertaining to such building which it may be necessary to purchase or acquire for the purpose of making the streets or of passages, or of effecting any of the improvements specified in the schedule referred to in section 336, shall be shown in the standard plan referred in that section, and the Commissioners may at any time after the receipt of the report made under that section, purchase or acquire—

- (a) any such masonry building, or
- (b) any land appertaining to such building, or
- (c) any such building, together with the land appertaining thereto or any portion thereof,

which is mentioned in that behalf in the schedule.

(2) Save as is provided in this section none of the powers conferred under the provisions of this chapter shall be exercised in respect of any building or land referred to in clauses (a), (b) or (c) of sub-section (1), but the fact that a masonry building is situated in a bustee shall not prevent action being taken with reference to such bustee under the provisions of this chapter.

Streets and
passages shown
in standard plan,
if not public
streets, to
remain private.

341. (1) Every street or passage in a bustee which is shown in a standard plan approved under this chapter for that bustee and which is not already a public street shall, unless the Commissioners and the owners of the land on which such street or passage is situated otherwise consent as provided in section 229, be deemed to be a private street ; and the portion thereof which falls on the land of each owner shall belong to such owner :

of 1932.]

(Chapter X.—Bustees.—Secs. 342—344.)

Provided that any portion of any such street or passage which is situated on land purchased or acquired by the Commissioners under section 340 shall remain the property of the Commissioners.

(2) Every such private street shall, at all times, be kept open for scavenging purposes and for all other purposes of this Act in such manner as the Commissioners may require, and shall also be kept open for the use of all the tenants of the *bustee* :

IX of
1908.

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, no use of any such street shall, by reason of any lapse of time, be held to confer a right-of-way on the public so as to bring the street within the definition of a public street.

342. The bathing arrangements and privy accommodation in a *bustee* which are shown in the standard plan approved under this chapter for such *bustee* as being common to the use of all or some of the tenants of the *bustee*, shall at all times be kept available for the use of such tenants :

Bathing arrangements and privy accommodation in *bustee*, as shown in standard plan, to be kept open for use for tenants.

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, if at any time the land on which any such bathing arrangements or privy accommodation are provided ceases to form part of such *bustee*, no such use shall, by reason of any lapse of time, be held to confer any right on any person so as prejudicially to affect the rights of the owner of such land.

343. (1) The owner of any land in a *bustee* for which a standard plan has been approved under this chapter shall maintain in proper order and repair, to the satisfaction of the Commissioners, such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works on such land as may be shown in the plan.

Owner of land in *bustee* to maintain certain conveniences on his land.

(2) The Commissioners may, at any time, cause a written notice to be served upon such owner requiring him so to maintain such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works :

Provided that any convenience made by the owner of a hut for his own use shall, subject to such notice as aforesaid, be maintained by him, and not by the owner of the *bustee*.

344. (1) The owner of any land included in a *bustee* and forming a separate holding may, at any time, whether or not a standard plan has been prepared for the *bustee*, notify the Commissioners in writing that he intends to remove all the huts standing on such land.

Power to owner to take land out of the category of *bustee* in certain

(Chapter X.—Bustees.—Sec. 344.)

(2) The receipt of any such notice shall not debar the Commissioners from approving a standard plan of such *bustee*.

(3) From the date of such notice no application shall be entertained for erecting on such land any hut or adding to any hut standing thereon.

(4) Such owner shall, within six months after the date of such notice, or within such further time as the Commissioners at a meeting may, from time to time allow, remove all huts standing on such land; and if he does not do so, the notice shall be deemed to be cancelled.

(5) When all such huts have been so removed, such land shall according to its situation either—

(i) be altogether excluded from the limits of the *bustee*,
or

(ii) be shown, in a standard plan approved for the *bustee* under this chapter, as not being a part of such *bustee* :

Provided that if, in the standard plan, any street or passage is shown on such land, the provisions of sections 341 and 343 shall, with all necessary modifications, be deemed to apply to such street or passage, unless the Commissioners at a meeting otherwise direct.

(6) If after all the huts have been removed under sub-section (4) any application is received for erecting any hut on such land, the Commissioners may, by written notice, require the owner of the land to carry out such improvements included in the standard plan as they may think fit.

(7) When all the huts standing on any land within a *bustee* have been removed under sub-section (4), the Commissioners at a meeting may either—

(a) cancel the standard plan (if any), already approved, under this chapter, for such *bustee*, or

(b) modify such plan, after hearing the objections (if any) of any owner of land included in such *bustee*.

(8) When any land, formerly included in a *bustee*, ceases to be so included, and where any street or passage was shown on such land in the standard plan, and where, on such land ceasing to be so included, the Commissioners at a meeting do not consider it to be practicable, or do not consider it to be expedient to change the alignment of such street they shall, in applying the proviso to sub-section (5) to such street, compensate the owner of such land for any area that is

of 1932.]

(Chapter X.—Bustees.—Secs. 345, 346.)

included in such street, which is in excess of one-seventh of the entire area of the land, which ceases to be included in the *bustee*.

345. (1) In any *bustee* in respect of which a standard plan has not been prepared, or in any area in which it appears to the Commissioners that huts are likely to be erected, the Commissioners at a meeting may, after hearing the objections, if any, of any owner of land in such *bustee*, prescribe alignments, not more than sixteen feet in width, for such private streets as they may think fit.

Power to Commissioners to prescribe alignments for *bustee* streets.

(2) When the land within such *bustee* or area is owned by more owners than one, each owning one or more separate plots of such land, such alignments shall as far as practicable be so prescribed as not to occupy, within any such plot, more than one-fifth of the area thereof, and shall not ordinarily be less than two hundred and fifty feet apart.

(3) If, in any such plot, more than one-fifth of the area thereof is occupied by such alignments, the Commissioners shall pay reasonable compensation to the owner of the plot:

Provided that no such compensation shall be paid in respect of any such plot as long as any hut or other structure other than a masonry building is left standing in the plot within any such alignment.

(4) No hut or portion of a hut shall be erected within any alignment prescribed under sub-section (1).

(5) The provisions of section 341 shall, with all necessary modifications, be deemed to apply to every street, the alignment for which has been prescribed under this section.

346. (1) In any *bustee*, at any time after the expiration of seven years from the time when any alignment has been prescribed for a street or for huts under section 345, the Commissioners at a meeting may, by written notice, require the owner of the land or the owners or occupiers of existing huts to remove such huts or portions thereof as fall—

Power to Commissioners to require removal of existing huts within street or hut alignment in *bustee*.

- (i) within any such prescribed street alignment, or
- (ii) within six feet on either side of any such prescribed hut alignment,

as the case may be.

(2) When a hut has been removed under the provisions of sub-section (1), the Commissioners at a meeting shall pay to the owner thereof such compensation as they may consider to be reasonable, but such compensation shall in no case exceed the value of the hut less the value of the materials thereof.

[Ben. Act XV]

(Chapter X.—Bustees.—Chapter XI.—Purity of water-supply.—Secs. 347, 348.)

Power to Commissioners to require space to be kept between masonry building in bustee and centre line of bustee street.

347. Any person who erects a masonry building—

- (a) in any bustee in respect of which a standard plan has been approved under section 337, or
- (b) in any bustee or area in respect of which alignments for streets have been prescribed under section 345,

shall, if so required by written notice issued by the Commissioners at a meeting, leave a clear space of fifteen feet between the centre line of any street or passage shown in such plan, or of any street, the alignment for which has been so prescribed, as the case may be, and the nearest part of such building.

CHAPTER XI.

Purity of water-supply.

Power to set apart wells, tanks, etc., for drinking, culinary, bathing and washing purposes.

348. The Commissioners may, by order published at such places as they think fit, set apart any tank, well, spring or water-course or any part thereof, vested in or under their control, or with the consent of the owner thereof, any tank, well, spring or water-course or part thereof subject to any rights which the owner may retain with the consent of the Commissioners for any of the following purposes, namely,—

- (a) for the supply of water for drinking or for culinary purposes or for both, or
- (b) for the purpose of bathing, or
- (c) for washing animals or clothes, or
- (d) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing or the washing of animals or clothes or other things at any public place not set apart for that purpose, or at any time or by a sex other than that specified in the order and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

of 1932.]

(Chapter XI.—Purity of water-supply.—Secs. 349—352.)

349. The Commissioners may, by notice, require the owner of, or the person having control over, a private tank, well, spring or water-course or other place, the water of which is used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same.

Power to require cleansing of sources of water for drinking or culinary purposes.

350. If the Commissioners at a meeting after due inquiry are satisfied that the water of any tank, well, spring or water-course, or part thereof or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease, and that owing to its situation or other cause such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 349, the Commissioners may—

Power to prohibit use of polluted water for drinking or culinary purposes.

- (a) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice and take such steps as they may consider necessary to prevent the use or removal of water for such purposes, or
- (b) in the case of a private well, require the owner of, or person having control over it to close it permanently or to fill it up with suitable material.

351. The Commissioners or any person authorised by them in this behalf may, at all reasonable times, inspect and disinfect any tank, well, spring or water-course or other place from which water is, or is likely to be taken for drinking or culinary purposes.

Power to inspect and disinfect sources of water used for drinking or culinary purposes.

352. (1) The ¹[Provincial Government] may make rules to provide for the proper analysis of the water of any water-works, tanks, well, spring or water-course or other place, used or likely to be used for drinking or culinary purposes in any municipality and in particular may—

Analysis of water for drinking or culinary purposes.

- (a) require the Commissioners to make over at such times and places and to such person or persons as the Director of Public Health may appoint in this behalf, samples of water taken under such precautions and in such manner as the Director of Public Health may prescribe,
- (i) from the water-works of the Commissioner where any exist, or

¹See foot-note 3 on p. 85, *ante*.

(Chapter XI.—Purity of water-supply.—Sec. 353.)

(ii) where no water-works exist or where any water used for domestic or culinary purposes is drawn from any tank, well, spring or water-course or other source of supply, then from any such tank, well, spring or water-course or other source of supply as the Director of Public Health may at any time specify in this behalf ;

(b) prescribe a scale of fees to be paid by the Commissioners for the analysis which shall be made of the aforementioned samples under the direction of the Director of Public Health.

(2) Where any tank, well, spring or water-course or other source of supply is not within the control of the Commissioners, they shall nevertheless have full power to take water in such manner as they may think proper from any of the above sources of supply for the purpose of furnishing samples to the Director of Public Health.

Application for analysis by Public Analyst of water for domestic purposes.

353. On the representation of two qualified medical practitioners or ten or more persons to the Commissioner, of any municipality within whose jurisdiction they reside, that within the municipality the water in any tank, well-spring or water-course, public or private, used or likely to be used for drinking or culinary purposes or for the manufacture of aerated or other drinks for human consumption is so polluted as to be injurious to health, the Commissioners shall forward a sample of such water to the Public Analyst for analysis at the cost of the Commissioners and if the Public Analyst certifies that such water, if used for drinking or culinary purposes, is liable to engender or cause the spread of disease, the Commissioners shall take measures to remedy the same or require the owner or person having control over such source of supply to take such measures for this purpose as to the Commissioners may seem fit, or if such source of supply cannot in their opinion effectively be protected from pollution, then the Commissioners shall make such order as they think proper and are empowered to make under this Act :

Provided that if the Commissioners are of opinion for reasons to be stated in writing that any representation made under this section is frivolous or vexatious, they may, before forwarding a sample of the water to the Public Analyst, require the persons making the representation to deposit the cost of the analysis, which shall be refunded in the event of the Public Analyst granting the certificate referred to in this section.

of 1932.]

(Chapter XI.—Purity of water-supply.—Chapter XII.—
Insanitary and Dangerous Property.—Secs. 354—356.)

Ben. Act
VI of
1919.

354. Where the Commissioners have appointed a person to be the Public Analyst for the area under their control under section 3 of the Bengal Food Adulteration Act, 1919, the ¹[Provincial Government] may, with the consent of the Commissioners, direct that any analysis prescribed under sections 352 and 353 of this Act shall be made by such analyst on the payment of such fees by the Commissioners for whom the analysis may be made, as the ¹[Provincial Government] may fix.

Fees for
analysis of
water.

By-laws relating to public water-supply, etc.

355. The Commissioners at a meeting may make by-laws regulating the use of, and the prevention of nuisances in regard to, the public water-supply, bathing and washing places, streams, channels, tanks and wells.

Power to make
by-laws.

CHAPTER XII.

Insanitary and Dangerous Property.

356. (1) When—

- (a) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or
- (b) any cistern, reservoir or water-butt or any other receptacle or place where water is stored or accumulates, or
- (c) any waste or stagnant water, whether within any private enclosure or not,

Power to direct
the filling up,
etc., of un-
wholesome wells,
pools, etc.

appears to the Commissioners to be or to be likely to become injurious to health or offensive to the neighbourhood, they may, by written notice, require the owner or occupier of the land or building to which such well, cistern, reservoir, water-butt or receptacle pertains, or of the land, as the case may be, in which such pool, ditch, tank, pond, pit, ground, place or water is situated, at the expense of such owner or occupier—

- (i) to cleanse the same, or
- (ii) to re-excavate the same, or
- (iii) to fill up the same with suitable material, or
- (iv) to drain off or to remove water from the same,

¹See foot-note 3 on p. 85, ante.

*(Chapter XII.—Insanitary and Dangerous Property.—
Secs. 357, 358.)*

or to take such other order therewith as the Commissioners may deem necessary within such period as may be specified in the notice.

(2) If the Commissioners, in exercise of the powers conferred under this Act, execute any work referred to in a notice issued under sub-section (1), and if the person liable to pay the expenses of such work fails to pay the same, the Commissioners may, until such expenses are paid,—

(i) take over and let out on lease any part of the land used in connection with the said well, pool, ditch, tank, pond, pit, cistern, reservoir, water-butt, receptacle, place of water, or any part of the said ground, as the case may be, or

(ii) retain possession of the same, or the site thereof, and utilize it for public purposes.

(3) If the said expenses be paid by an occupier of land, he may in the absence of any agreement to the contrary deduct the same from any rent due to the owner of the land.

Power to Commissioners to regulate excavations.

357. (1) No person shall, within a municipality without the special permission of the Commissioners, make an excavation for the purpose of taking earth therefrom, or for the making of bricks or for the purposes of storing rubbish or offensive matter therein or dig any cess-pools, tanks, ponds, wells or pits :

Provided that the Commissioners at a meeting may make such general exemptions from the provisions of this section as may appear to them to be necessary for the public convenience.

(2) If any such excavation, cess-pool, tank, pond, well or pit is made or dug without the permission required under sub-section (1), the Commissioners may, whether the offender be prosecuted or not, by written notice require the owner or occupier of the land on which the same is made or dug to fill up the same with earth or other material approved by the Commissioners within such time as may be specified in the notice.

Power to extend sections 356 and 357 beyond municipal limits.

358. The Commissioners of a municipality may, in consultation with any adjacent local authority and subject to the approval of the ¹[Provincial Government], extend the provisions of sections 356 and 357 to any area beyond the municipality and may make such provision as to costs for execution of any work in the area as may be agreed upon between the Commissioners and the local authority concerned.

¹See foot-note 3 on page 86, ante.

of 1932.]

(Chapter XII.—*Insanitary and Dangerous Property.*—
Secs. 359, 360.)

359. (1) If any well, tank or other excavation, whether on public or private ground, is, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the premises or served on owners or occupiers (if any) of the land on which such tank, well or other excavation is situated requiring such owner or occupier forthwith properly to secure or protect such well, tank or other excavation.

Wells, tanks, etc., to be secured.

(2) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the cost of the owner or occupier of such land for the safety of the public.

360. If the Commissioners at a meeting, after due inquiry, are satisfied that the cultivation of any description of crop, or the use of any kind of manure or the irrigation of land in any specified manner—

Power to prohibit cultivation, use of manure or irrigation injurious to health, and to remove growth of water-hyacinth and other noxious plants.

(a) in any place within the limits of the municipality, is injurious, to the health of persons dwelling in the neighbourhood, or

(b) in any place within or without the limits of the municipality, is likely to contaminate the water-supply of the municipality or otherwise render it unfit for drinking or culinary purposes,

or that any person is permitting the growth within or without the limits of the municipality of water-hyacinth, or such other noxious plants as may be certified in this behalf by the ¹[Provincial Government] as being a danger to the health of persons resident within the limits of the municipality or to navigation within those limits,

the ¹[Provincial Government] may, on receipt of an application from the Commissioners, by public notice, prohibit the cultivation of such crop, the use of such manure, or the use of the method of irrigation so certified to be injurious, or impose such conditions with respect thereto as may prevent the injury or, in the case of water-hyacinth or such other noxious plant as may be in this behalf notified, may impose such regulations as may secure the removal of the same :

Provided that, if the act prohibited has been practised in the ordinary course of husbandry at any time during the five successive years last preceding the date of the prohibition, compensation shall be paid from the Municipal Fund to all persons interested therein for any damage caused to them by such prohibition.

¹See foot-note 3 on page 85, ante.

(Chapter XII.—Insanitary and Dangerous Property.—
Secs. 361—364.)

Power to
inspect premises
for sanitary
purposes.

361. The Commissioners may inspect any building or other premises for the purpose of ascertaining the sanitary condition thereof :

Provided that no such inspection shall be made at night except by an officer specially authorized by the Commissioners in this behalf without giving reasonable notice.

Power to
require cleansing
and lime-washing
of building.

362. If it appears to the Commissioners necessary for sanitary reasons so to do, they may, by written notice, require the owner or occupier of any building inspected under section 361 to cause the same or any portion thereof to be lime-washed or otherwise cleansed, either externally or internally or both externally and internally.

Power to require
owners to clear
noxious
vegetation
and to
improve bad
drainage.

363. Whenever any land, being private property or within any private enclosure, appears to the Commissioners, by reason of thick vegetation, undergrowth or jungle, or inequalities of surface, or by want of drainage, to be in a state injurious to health or offensive to the neighbourhood, the Commissioners at a meeting may require the owners or occupiers or the owners and occupiers, of such land, within fifteen days to clear and remove such vegetation, undergrowth or jungle, or dress such surface or drain such land :

Provided that, if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Power to
demolish, repair
or secure wall,
building or
fixture in a
ruinous
state, etc.

364. (1) If any wall or building, or anything affixed thereto, be deemed by the Commissioners to be in a ruinous state, or likely to fall, or to be in any way dangerous, they shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the wall or building or served on the occupier (if any) of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building or thing as the case may require.

(2) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof ; and may also, after giving them such notice as the Commissioners may think necessary, require the inmates of the building to vacate it.

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(Chapter XII.—Insanitary and Dangerous Property.—
Sec. 365.)

* (3) So far as they are in force in the municipality the provisions of this Act and of Schedule VI, and of any rules or by-laws made under this Act relating to buildings shall apply to any work done in that municipality in pursuance, or in consequence, of a notice issued under sub-section (1).

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Put an asterisk against sub-section (3) of section 364, and insert the following footnote, namely:—

*In the application of the Act to the district of Darjeeling, in sub-section (3) of section 364, for the word and letters "Schedule VI" substitute the words and letters "Schedule VI or Schedule VI(A)."

[Substituted by paragraph XVIII(iii) of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.]

[No. 38, dated the 6th December, 1945.]

(b) that a block or group of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,—

they may by notice require the owners or occupiers of such building or buildings or portions thereof, or, at the option of the Commissioners, the owners of the land occupied by such building or buildings or portions thereof, to execute such works or to take such measures as they may deem necessary for the prevention of such risk.

(2) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this section, save when the building is demolished to the extent of more than half of its cubical contents in pursuance of an order made thereunder, in which case the Commissioners shall pay reasonable compensation to the owners thereof.

(3) When any building is entirely demolished under this section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first named building in proportion to the increased value accruing to their own premises.

The amount of such contribution and the proportions in which it is to be divided among the owners of such other buildings shall be determined by the Commissioners at a meeting and shall be recoverable as though it were a rate under the provisions of Chapter V.

(4) When any building though not entirely demolished under this section is demolished to the extent of more than

(Chapter XII.—*Insanitary and Dangerous Property*.—
Sec. 366.)

half of its cubical contents, allowance shall be made in determining the compensation for the benefit accruing to the premises from the improvement thereof.

(5) Any person aggrieved by an order made by the Commissioners under this section may appeal to the ¹[Provincial Government] within thirty days and the decision of the ¹[Provincial Government], given after such inquiry as it thinks fit, shall be final.

(6) The order made by the Commissioners under this section shall not take effect until the expiry of thirty days, or, if an appeal has been lodged until the decision of the ¹[Provincial Government] is given under sub-section (5).

Procedure in
cases of
buildings
deemed unfit
for human
habitation.

366. (1) If, for any reason, any building or portion of a building intended for, or used as, a dwelling place appears to the Commissioners at a meeting to be unfit for human habitation, they may require the owner or occupier of such building to make such alterations as they think necessary in the building in order to make it fit for human habitation, if they consider that this can be done, but whether they think it can be made fit for human habitation or not, they may, in either case, after giving the owner or occupier an opportunity of being heard, apply to a Magistrate to prohibit the further use of such building or portion thereof for such purpose ;

and the Magistrate shall serve a notice on such owner or occupier so as to give him an opportunity of being heard in the Court, and after such inquiry as he thinks fit to make, may, by written order, prohibit the further use thereof, or may pass such other order as he may deem just and proper.

(2) When any such prohibition has been made, the Commissioners may—

- (i) inspect such building by day or by night, and
- (ii) take such order as may be necessary to preclude the further use of the same, or of the portion specified in the prohibition as a human habitation.

(3) When any such prohibition has been made, no owner or occupier of such building shall use, or suffer the same, or the portion specified in the prohibition, to be used for human habitation until—

- (a) the Chairman certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction, or
- (b) the Magistrate, by written order, withdraws the prohibition.

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

*(Chapter XII.—Insanitary and Dangerous Property.—
Secs. 367, 368.)*

(4) The Commissioners shall prepare and maintain at the municipal office a list of buildings in respect of which the Magistrate has passed an order under sub-section (1), and such list shall contain such particulars as to the action taken by the Commissioners or the owner in pursuance of such order or otherwise, as the Chairman shall think fit and shall be open to inspection by the public free of charge.

367. (1) When a Magistrate has prohibited the use of a building for human habitation under section 366 and such prohibition has been in force for three months, the Commissioners at a meeting shall take into consideration the question of the demolition of such building,

Power to
Commissioners
to require
demolition of
building unfit
for human
habitation.

and shall give notice of the time (being some time not less than one month after the service of the notice) and place at which such question will be considered to the owner, and to the occupier (if any) of the building,

and the said owner and occupier shall be entitled to be heard when the question is so taken into consideration.

(2) If, upon such consideration, the Commissioners are of opinion that the building has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, they shall cause a written notice to be served on the said owner and occupier and also to be put on some conspicuous part of such building, requiring such owner and occupier to demolish the building or any portion thereof as the case may be or to execute such work as in the opinion of the Commissioners at a meeting may be necessary to render the building fit for human habitation.

(3) If such owner or occupier undertakes to execute with due diligence the work necessary to render the building fit for human habitation, and the Commissioners consider that it can be so rendered fit for human habitation, the Commissioners may postpone the operation of the said notice for such time as they think sufficient for the purpose of giving the said owner or occupier an opportunity of executing the necessary work.

368. (1) If it appears to the Commissioners that any dwelling-house or other building which is used as a dwelling-place, or any room in such dwelling-house or building, is so overcrowded as to endanger the health of the inmates thereof, they may apply to a Magistrate to abate such overcrowding; and the Magistrate, after such inquiry as he thinks fit to make, may, by written order, require the owner of the building, or room, within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding

Abatement of
overcrowding
in dwelling-house
or dwelling-
place.

(Chapter XII.—Insanitary and Dangerous Property.—
Chapter XIII.—Offensive and Dangerous Trades, Occupations or Processes.—Secs. 369, 370.)

by reducing the number of lodgers, tenants, or other inmates of the building or room, or may pass such other order as he may deem just and proper.

(2) The Commissioners at a meeting may, by written order, declare what amount of superficial and cubic space shall be deemed for the purpose of sub-section (1) to be necessary for each occupant of a building or room.

(3) If any building or room referred to in sub-section (1) has been sublet, the landlord of the lodgers, tenants, or other actual inmates of the same, shall, for the purposes of this section, be deemed to be the owner of the building or room.

(4) Notwithstanding anything contained in any law or in any contract to the contrary it shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do in pursuance of any requisition made under sub-section (1).

(5) Nothing in sub-section (1) shall apply to a dwelling-house or building used as a dwelling-place or a room in such dwelling-house or building which is overcrowded by the members of family of the owner thereof.

Prevention of
danger from
ruinous
buildings, etc.

369. Notwithstanding anything contained in this Act, where it appears to the Commissioners that immediate action is necessary for the purpose of preventing imminent danger to person or property from any building, wall, bank, or other structure or anything affixed thereto or to remove any tree or other thing, which appears to them to be a source of imminent danger to person or property the Commissioners may take such immediate action themselves; and in such a case, it shall not be necessary for the Commissioners to give notice, if it appears to them that the object of taking such immediate action would be defeated by the delay incurred in giving notice.

CHAPTER XIII.

Offensive and Dangerous Trades, Occupations or Processes.

Power to
prohibit certain
offensive and
dangerous trades
without license.

370. (1) No person shall use or permit to be used any place within such local limits as may be fixed by the Commissioners at a meeting without a license from the Commissioners (which shall be renewable annually) for any of the following purposes, namely :—

- (i) for the slaughter of animals or for the skinning or disembowelling of animals for purposes other than human consumption :

of 1932.]

(Chapter XIII.—*Offensive and Dangerous Trades, Occupations or Processes.*—Sec. 370.)

Provided that this clause shall not apply to slaughter of animal for a *bona fide* religious purpose or on a ceremonial occasion ; or

- (ii) for storing hides, fish, horns or skins ; or
- (iii) for boiling or storing offal, blood, bones or rags ; or
- (iv) for melting tallow ; or
- (v) for tanning or for the manufacture of leather or leather goods ; or
- (vi) for oil-boiling ; or
- (vii) for soap-making ; or
- (viii) for dyeing ; or
- (ix) for burning or baking bricks, tiles, pottery or lime, whether for trade or private purposes ; or
- (x) as a depot for trade in coal or coke ; or
- (xi) for storing kerosine, petroleum, naphtha, or any inflammable oil or spirit ; or
- (xii) for trading in, or storing for other than his own domestic use, hay, straw, wood, thatching grass, jute or other dangerously inflammable material :

Provided that this clause shall not apply to the stock of any such article held by and intended for use in the business of, any mill, factory, shipyard, engineering or other manufacturing firm ¹[to which the provisions of the Indian Factories Act, 1934, apply and which is] situated within the municipality ; or

- (xiii) for any manufacture, process or business from which offensive or unwholesome smells or offensive noises may arise ; or
- (xiv) for any trade, process or business which the ²[Provincial Government] may, by notification, declare to be a trade, process or business which requires to be regulated under the provisions of this chapter.

(2) A license for any of the purposes mentioned in subsection (1) shall not be withheld unless the Commissioners at a meeting have reason to believe that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in or

¹These words and figure were inserted by s. 35 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See footnote 3 on p. 85, *ante*.

*(Chapter XIII.—Offensive and Dangerous Trades,
Occupations or Processes.—Secs. 371—373.)*

frequenting the immediate neighbourhood or that the area should be for general reasons kept clear of the establishment of such business.

(3) The Commissioners at a meeting may, in accordance with a scale of fees to be prepared by them from time to time and approved by the ¹[Provincial Government], levy a fee in respect of any such license and the renewal thereof, and may impose such conditions as to supervision, inspection, conservancy and other matters upon the grant of any such license as they may think necessary.

(4) The grant of a license for the purposes mentioned in clause (xi) of sub-section (1) shall be consistent with the provisions of the Indian Petroleum Act, 1899, and no such license shall be granted unless the said provisions have been complied with by the applicant for the license.

VIII of
1899.

Power to order
the carrying on
of dangerous
and offensive
trades to
be discontinued.

371. If it appears to the Commissioners at a meeting that at any place licensed under section 370 the business is being carried on in contravention of the terms of the license in such a way as to be a cause of annoyance or offence to persons residing in or frequenting the immediate neighbourhood or of danger to health, they may, notwithstanding anything contained in the said section, after giving one month's notice to the licensee, cancel his license.

Licensing of
places for
keeping horses
and cattle.

372. (1) No dairyman, milkman, cartman, livery stable-keeper or keeper of hackney carriages shall keep horses, ponies, cattle or other four-footed animals for the purposes of trade or business except in a place licensed by the Commissioners :

Provided that this sub-section shall not apply to a cartman who keeps not more than four animals for the purpose of using them with his own cart.

(2) Licenses granted under sub-section (1) shall be subject to such conditions as the Commissioners at a meeting may impose in respect of the site, construction, materials and dimensions of any structure erected for keeping horses, ponies, cattle or other four-footed animals, and in respect of the fencing, drainage, cleansing and in any other matter relating to the regulation of such places as they may think necessary.

Commissioners
may provide
public stables.

373. (1) The Commissioners at a meeting may provide public stables for the accommodation of horses and cattle and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle,

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter XIII.—Offensive and Dangerous Trades, Occupations or Processes.—Secs. 374, 375.)

exceeding ten in number, for the purpose of trade or business except in such public stables, or in places licensed under section 372.

(2) The Commissioners at a meeting may charge such reasonable fees as they shall think fit for the use of such public stables.

(3) The Commissioners at a meeting may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

(4) It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

374. (1) Within such limits as the Commissioners at a meeting may direct, no person shall keep pigs or in any place more than twenty sheep or twenty goats without a license from the Commissioners, which shall be renewable annually.

Conditions for keeping pigs, sheep and goats.

(2) The Commissioners at a meeting may charge an annual fee not exceeding two rupees for such license, and in respect of such license may impose such conditions as to fencing, drainage, paving, cleansing and other matters for the regulation of such places as they may think necessary.

375. The Commissioners at a meeting may make by-laws—

Power to make by-laws regulating places used for offensive trades, etc.

(a) providing for the inspection and regulation of the conduct of business in a place used for any of the purposes mentioned in section 370, so as to secure cleanliness therein, or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom ;

(b) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to the public health, the stalling of elephants, horses, camels, cattle, donkeys, sheep or goats ;

(c) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to the public health the place and manner of stalling pigs ; and

(d) to prevent the straying of pigs.

*(Chapter XIV.—Restraint of Infection.— Secs. 376—378.)***CHAPTER XIV.****Restraint of Infection.**

Duty of Commissioners in case of epidemic.

376. If the Commissioners have reason to believe that any dangerous disease as appeared or is likely to appear in epidemic form within the municipality, they shall promptly investigate the matter, secure the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons ; see that no person suffers for lack of nurses or other necessaries because of isolation for the public good ; give public notice of infected places by placard on the premises and otherwise, if necessary, promptly notify head teachers of schools concerning families any of the members of which are suffering from dangerous diseases ; supervise funerals of persons dead from such diseases, disinfect rooms, clothing and premises, and all articles likely to be infected ; and generally so exercise the powers conferred on them by this Act as to guard and protect the public health and do such things as may be necessary to check and prevent the spread of the disease.

Information to be given of dangerous disease.

377. A medical practitioner or a person practising the medical profession, and in the course of such practice becoming cognizant of the existence of any dangerous disease in any building other than a public hospital ; or if no medical practitioner or person practising the medical profession is so cognizant, the owner or occupier of such building cognizant of the existence of any such disease therein ; or if the owner or occupier is not so cognizant, the person in charge of, or in attendance on, any person, suffering from any such disease in such building, cognizant of the existence of the disease therein, shall give true and correct information to such officer as the Commissioners may direct respecting the existence of such disease :

Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it be shown that he had reasonable cause to suppose that the information has been, or would be duly given.

Power to Commissioners to remove patient to hospital in certain cases.

378. (1) When, in the opinion of any registered medical practitioner, any person is suffering in any municipality from any dangerous disease and is also without proper lodging or accommodation or is lodged in such a manner that he cannot be effectually isolated so as to prevent infection or contagion, and the said practitioner considers that such person should be removed to a hospital or place at which

of 1932.]

(Chapter XIV.—Restraint of Infection.—Sec. 379.)

patients suffering from such disease are received for medical treatment, he may send a certificate to that effect to the Commissioners.

(2) On receipt of any such certificate, the Commissioners may direct or cause the removal of such person to such hospital or place :

Provided that all costs incurred for the removal and in the treatment of any such patient may be borne by the Commissioners :

Provided also that, if any such person is a female, she shall not be removed to any such hospital or place unless the same has accommodation for females, and set apart from the portion assigned to males.

(3) The person (if any) who has charge of a person, in respect of whom an order is made under sub-section (2), shall obey such order.

(4) If any female who, according to the custom of the country, does not appear in public, be removed to any hospital or place under sub-section (2)—

- (a) the removal shall be effected in such a way as to preserve her privacy ;
- (b) special accommodation suited to such custom shall be provided for her in such hospital or place ;
- (c) one female relative or attendant shall be allowed to remain with her.

(5) The Commissioners at a meeting may provide nurses for attendance on patients suffering from any dangerous disease in the municipality who, owing to want of hospital accommodation or danger of infection or contagion, cannot be removed to hospital or in cases where removal to the hospital is likely to endanger the patient's health ; and may charge such reasonable fees for the services of and fix the qualifications, duties and salaries of such nurses.

379. (1) If the Commissioners are of opinion—

- (a) that any building or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or
- (b) that the cleansing, limewashing or disinfecting, as the case may be, of any building or any part of a building or of any tank or pool or well adjacent to a building, or that the cleansing, disinfection, purification or destruction of any article therein which is likely to retain infection or by reason of its filthy condition likely to cause injury to the health of any person, would tend to check or prevent the spread of any dangerous disease,

Power to
cleanse or
disinfect
buildings,
tank, etc.

(Chapter XIV.—Restraint of Infection.—Sec. 380.)

they may cause such building or part thereof to be cleansed, limewashed or disinfected or such tank, pool, well or article to be cleansed, disinfected or purified or such article to be destroyed and may, by written notice, require the occupier of such building or any part thereof to vacate the same for such time as may be prescribed in such notice.

(2) The cost of such cleansing or disinfecting shall be paid by the occupier of the building, or in the case of any tank, pool or well not let out with a building by the owner or occupier of the holding in which such tank, pool or well is situated according as the Commissioners at a meeting may determine :

Provided that—

(a) if, in the opinion of the Commissioners at a meeting, the occupier is from poverty unable to pay the said cost, the Commissioners shall direct payment thereof to be made from the Municipal Fund, and

(b) the Commissioners shall provide temporary shelter or house accommodation for the members of any family in which any dangerous disease has appeared who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected for any part of a night.

(3) Where a person sustains damage in consequence of the destruction of any article under this section, and the condition of such article is not attributable to the act or default of such person, the Commissioners at a meeting shall make reasonable compensation to that person.

**Power to
Commissioners
to destroy
huts and sheds.**

380. (1) If the Commissioners are of opinion that the destruction of any hut or shed is necessary to prevent the spread of any dangerous disease, they may, after giving to the owner or occupier of such hut or shed such previous notice of their intention as may in the circumstances of the case appear to them to be reasonable, take measures for having such hut or shed and all the materials thereof destroyed.

(2) The Commissioners at a meeting shall make such compensation not exceeding the value of the hut as they think proper to any person who sustains loss by the destruction of any such hut or shed, but except as so allowed by the Commissioners, no claim for compensation shall lie for any loss or damage caused by any exercise of the power conferred by sub-section (1).

of 1932.]

(Chapter XIV.—Restraint of Infection.—Secs. 381—384.)

381. No person shall knowingly let a dwelling-house or other building or part of a dwelling-house or building in which any person has been suffering from any dangerous disease—

Infected building not to be let.

- (a) unless such house, building or part thereof and all articles therein liable to retain infection have been disinfected and the Commissioners have granted a certificate to that effect, and
- (b) until a date specified in such certificate as that on which the house, building or part may be occupied and the articles therein used without causing risk of infection or contagion.

For the purposes of this section a hotel or lodging house-keeper shall be deemed to let part of his hotel or lodging house to any person accommodated therein.

382. (1) The Commissioners at a meeting may provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection or contagion.

Provision of places and appliances for disinfection.

(2) The Commissioners may—

- (a) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them ; and
- (b) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this clause.

383. The Commissioners at a meeting may from time to time, by public notice, appoint a place or places at which conveyances, clothing, bedding or other articles which have been exposed to infection or contagion from any dangerous disease, may be washed, and no person shall wash or cause to be washed any such article at any place not so appointed, unless the same has been disinfected to the satisfaction of the Health Officer or Sanitary Inspector or of a registered medical practitioner.

Provision of places for disinfection or washing of infected articles.

384. No person suffering from any disease notified by the ¹[Provincial Government] in this behalf shall—

Acts done by persons suffering from certain diseases.

- (a) make or offer for sale any article of food for human consumption or any medicine or drug ; or
- (b) wilfully touch any such article, medicine or drug when exposed for sale by others ; or

¹See foot-note 3 on page 85, *ante*.

(Chapter XIV.—Restraint of Infection.—Secs. 385, 386.)

- (c) take any part in the business of washing or carrying soiled clothes ; or
- (d) sell clothes or any other article for human wear or likely to come into contact with the human body without a written permission from the Health Officer, or, in case of a municipality not employing a Health Officer, from the Chairman.

Infected articles not to be transmitted without previous disinfection.

385. (1) No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease.

(2) Nothing in sub-section (1) shall apply to a person who transmits, with proper precautions, any such article for the purpose of having the same disinfected.

Exposure of person suffering from dangerous disease, and restrictions on carriage of patient or dead body in public conveyance.

386. (1) No person shall—

- (a) while suffering from any dangerous disease wilfully expose himself in any street, public place, shop, bazar or any place used in common by persons other than members of the family or household to which such infected person belongs, or cause or suffer himself or any clothing, bedding or other article which has been exposed to infection or contagion to be carried in a public conveyance without previously notifying to the owner, driver or person in charge of such conveyance that he is so suffering or that such article is so infected, and without proper precautions against spreading the said disease, or
- (b) so carry or permit to be carried in a public conveyance the dead body of any person who has died from a dangerous disease or any clothing, bedding, or other article which has been exposed to infection or contagion or while in charge of any person suffering from any dangerous disease expose such sufferer in any such place as is referred to in clause (a) or carry such sufferer or permit him to be carried in a public conveyance without giving previous notice and taking the precautions referred to in that clause.

(2) Notwithstanding anything contained in any enactment relating to public conveyances for the time being in force, no owner or driver or person in charge of a public conveyance shall be bound to carry any person suffering as aforesaid or to carry any such dead body or any such infected clothing, bedding or other article as aforesaid, in such conveyance, unless payment or tender of sufficient

of 1932.]

(Chapter XIV.—*Restraint of Infection.*—Secs. 387—390.)

compensation for the loss and expenses which he must incur in disinfecting such conveyance is first of all made to him.

387. (1) The owner, driver or person in charge of any public conveyance in which any person suffering from any dangerous disease or the dead body of any person who has died from such disease or any clothing, bedding or other article which has been exposed to infection or contagion has been carried shall immediately take the conveyance for disinfection to a place, if any, appointed under section 382 or section 383.

Disinfection of public conveyance after carriage of patient or dead body.

(2) The person in charge of such place shall forthwith intimate to the Commissioners the number of the conveyance and proceed to disinfect the conveyance.

(3) If no place has been appointed under [section 382 or section 383], the Commissioners shall take such steps as they may think proper for disinfecting such conveyance.

(4) No such conveyance shall be used until the Commissioners have granted a certificate stating that it may be used without causing risk of infection or contagion.

388. (1) The Commissioners at a meeting may provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease or of the dead bodies of persons who have died from any such disease or for the removal of any clothing, bedding or other article which has been exposed to infection or contagion.

Power to provide special conveyances for patients, dead bodies and infected articles.

(2) When such conveyances have been provided, it shall not be lawful, without the sanction of the Commissioners, to carry any such person or dead body or any such clothing, bedding or other article in, or for any such person to cause himself to be carried in, or for any person to cause any such dead body or any such clothing, bedding or other article to be carried in, any other public conveyance.

389. The Commissioners may authorize any officer to enter, at any time between sunrise and sunset after three hours' notice, into any building or premises in which any dangerous disease is suspected to exist, for the purposes of inspecting such building or premises.

Power of entry for purposes of preventing spread of diseases.

390. (1) The Commissioners may, for a specified time, with a view to preventing the spread of any dangerous disease, order that any market, *sarai*, hotel or lodging-house within the municipality shall be closed, or forbid any person to attend any such market or to lodge in such *sarai*, hotel or lodging-house.

Power to close market, etc.

¹These words and figures were substituted for the words and figures "section 383 or section 384" by s. 8 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

(Chapter XIV.—*Restraint of Infection.*—Secs. 391, 392.)

(2) Such order shall be publicly notified in such manner and at such places as the Commissioners shall direct, and notice thereof shall be served on the owner, occupier or farmer of the market or the keeper of the *sarai*, hotel or lodging-house.

(3) After complying with the notice, the owner, occupier or farmer of the market or the keeper of the *sarai*, hotel or lodging-house or any person interested may appeal to the Magistrate, or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or of the Commissioner of the Division, as the case may be, shall be final.

Power to close
school.

391. (1) The Commissioners may, by notice, require the proprietor or person in charge of any school situated within the municipality for a specified time, with a view to preventing the spread of any dangerous disease or any danger to health likely to arise from the condition of the school, either to close the school or to exclude any scholars from attendance; and the proprietor or person in charge, as the case may be, shall forthwith comply with the notice.

(2) After complying with the notice, the proprietor or person in charge may appeal to the Magistrate or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or the Commissioner of the Division, as the case may be, shall be final.

By-laws for
control, etc., of
dangerous
disease.

392. The Commissioners at a meeting may make by-laws for the control, restraint and prevention of any dangerous disease and in particular, and without prejudice to the generality of the foregoing power, they may, and when required by the ¹[Provincial Government] shall, make by-laws regarding the following matters :—

- (a) the restraint, segregation, and isolation of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion ;
- (b) the removal, disinfection and destruction of personal effects, goods, houses and other property exposed to infection or contagion ;
- (c) the removal to hospital and the treatment of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion ;

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter XIV.—Restraint of Infection.—Sec. 392.)

- (d) the speedy burial or cremation of the bodies of persons who have died from any dangerous disease ;
- (e) house to house visiting and inspection ;
- (f) the promotion of cleanliness, ventilation and disinfection ;
- (g) the duties in respect of the prevention and notification of any dangerous disease, and in respect of persons suffering or suspected to be suffering therefrom, of the owners and occupiers of tea-gardens, factories, mills and workshops and of other persons employing in any one place not less than fifty persons ;
- (h) the duties of parents or guardians whose children being school children are suffering or have recently suffered from any dangerous disease or have been exposed to infection or contagion and the duties of persons in charge of schools in respect of such children ;
- (i) the prevention of the spread from any animal, or the carcasses or product of any animal, to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable to man by any animal or the carcass or product of any animal ;
- (j) the prevention of the spread and the eradication of malaria, the destruction of mosquitoes and the removal or abatement of conditions permitting or favouring the multiplication or prevalence of mosquitoes ;
- (k) the prevention of the spread of disease by flies or other insects and the destruction of such insects, and the removal or abatement of conditions permitting or favouring the prevalence or multiplication of such insects ;
- (l) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof ;
- (m) the prevention of the spread of any dangerous disease by the carrying on of any business, trade or occupation ;
- (n) the regulation of rag-flock manufacture and the trade in rags and in bones and in second-hand clothing, bedding or any similar article and the requiring any such article to be disinfected

[Ben. Act XV

(Chapter XIV.—Restraint of Infection.—Chapter XV.—Hospitals, Dispensaries, Child Welfare and School Hygiene.—Secs. 393, 394.)

before its importation, removal, sale or exposure for sale, or use in any manufacturing process ; and

- (o) the disposal of any refuse, waste matter or other matter or thing, which has been contaminated with or exposed to infection or contagion.

Vaccination.

Health Officer to exercise powers of Superintendent of Vaccination.

393. A Health Officer appointed under section 66 or section 67 shall, within the municipality to which he is appointed, subject to such restrictions as the ¹[Provincial Government] may impose, exercise the powers and perform the duties of a Superintendent of Vaccination.

CHAPTER XV.**Hospitals, Dispensaries, Child Welfare and School Hygiene.**

Power to Commissioners to provide hospitals, dispensaries, etc., for the reception of the sick.

394. (1) The Commissioners at a meeting may provide hospitals, dispensaries or temporary places for the reception of the sick, and for that purpose may—

- (a) themselves build, alter, add to and maintain such hospitals, dispensaries or places of reception ; or
- (b) contract for the use of any such dispensary, hospital or place of reception, or of any part thereof ; or
- (c) enter into an agreement with any person or authority having the management of any hospital, within or without the municipality for the reception of the sick inhabitants of the municipality on payment of such annual or other sum as may be agreed on.

(2) The Commissioners of any municipality may combine with any other local authority in providing, maintaining or improving a common dispensary, hospital or place for the reception of the sick, provided that the scheme of management and the apportionment of the costs shall be approved by the ¹[Provincial Government].

¹See foot-note 3 on p. 85, ante.

The Bengal Municipal Act, 1932.

of 1932.]

(Chapter XV.—Hospitals, Dispensaries, Child Welfare and School Hygiene.—Secs. 395, 396.)

- 395.** (1) The Commissioners at a meeting may provide—
- (a) midwives for attendance in maternity cases; and
 - (b) health visitors to visit and inspect any premises in the municipality and to give advice to expectant mothers on the management of their health and as to the proper nurture, care and management of young children, and the promotion of cleanliness.

Power of Commissioners to provide nurses, midwives, etc.

(2) The Commissioners at a meeting may charge such reasonable fees for the services of midwives provided by them as they think fit and may prescribe rules for the qualifications, duties and salaries of such midwives and of health visitors.

- 396.** The ¹[Provincial Government] may make rules—

Rules for child welfare.

- (a) requiring the father of a child if actually residing in the house where the child is born at the time of its birth, and any person in attendance upon the mother at the time of, or within twelve hours after, the birth, to give notice of the birth to the Health Officer or Sanitary Inspector in such manner as the Commissioners may prescribe;
- (b) requiring the certification and registration of all midwives, *dhais*, or other women who habitually or for gain attend women in childbirth, prescribing minimum qualifications, examinations and courses of training for any such persons or classes of persons, regulating the issue of certificates, deciding the conditions under which such persons may be suspended from practice and their certificates cancelled, and regulating, supervising and restricting within due limits the practice of such persons, particularly in regard to such matters as cleanliness, equipment, disinfection, and the submission of such reports and returns to the Health Officer, as may be prescribed;
- (c) regulating the appointment and powers of health visitors to advise persons as to infant-feeding, the proper nurture, care and management of young children and the promotion of cleanliness and regulating such other duties as may be assigned to health visitors; and
- (d) providing for the sanitary inspection of all schools and colleges and for the medical inspection of

¹See foot-note 3 on p. 85, *ante*.

(Chapter XVI.—*Extinction and Prevention of Fire.*—
Secs. 397, 398.)

children immediately before or at the time of, or as soon as possible after, their admission to a primary or secondary school and on such other occasions as the ¹[Provincial Government] may direct, and authorizing the Commissioners to make such arrangements as the ¹[Provincial Government] may approve, for attending to the health and physical condition of the children educated in such schools.

CHAPTER XVI.

Extinction and Prevention of Fire.

Power of fire
brigade and
other persons
for suppression
of fires.

397. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire brigade and to provide any implements, machinery or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

Power to direct
operations in case
of fire.

398. (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Executive Officer, the Secretary to the Commissioners, any member of a fire brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police officer above the rank of constable may—

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property ;
- (b) close any street or passage in or near which any fire is burning ;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises ;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred ;
- (e) call on the persons in charge of any fire engine to render such assistance as may be possible ; and
- (f) generally take such measures as may appear necessary for the preservation of life or property.

¹See foot-note 3 on p. 85, ante.

of 1932.]

Page 261—

After section 395, insert the following section, namely:—

398A. Sections 397 and 398 shall not apply to a municipality where the West Bengal Fire Services Act, 1950, is in force.”

(Inserted by West Bengal Act XXVIII of 1951, section 17.)

West Ben.
Act XVIII
of 1950.

[No. 48, dated the 1st April, 1952.]

in such house or building under the conditions of a license granted under section 370.

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the place contrary to the conditions of such license, he may pass an order confiscating the same.

(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the Municipal Fund.

(5) No order of confiscation under this section shall operate to prevent any criminal or other proceedings to which the person storing the material in excessive quantity may be liable.

400. The Commissioners at a meeting may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting hay, straw, wood, thatching grass, jute or other dangerously inflammable materials, or from placing mats on thatched huts or lighting fires in a place or within limits specified in the notice.

Stacking, etc.,
of inflammable
materials.

401. The Commissioners at a meeting may make by-laws—

Power to make
by-laws.

- (a) providing for the guidance, discipline and conduct of the members of a municipal fire brigade and any volunteer fire brigade recognized by the Commissioners;
- (b) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported;
- (c) regulating, either by rendering licenses necessary, or otherwise, the letting off of fire-arms, fireworks, fire-balloons, bombs or other explosives; and
- (d) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary.

*(Chapter XVII.—Markets and Slaughter-places.—Sec. 402.)***CHAPTER XVII.****Markets and Slaughter-places.**

Power to
provide and
maintain
municipal
markets,
slaughter-houses
and stock-yards.

402. (1) The Commissioners at a meeting may—

- (a) construct, purchase, take on lease or otherwise acquire any land or building for the purpose of establishing a new municipal market or a new municipal slaughter-house or municipal stock-yard or of extending or improving any existing municipal market, municipal slaughter-house or municipal stock-yard, and
- (b) from time to time build and maintain such municipal markets, municipal slaughter-houses and municipal stock-yards and such stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in, or frequenting, such markets, slaughter-houses or stock-yards, and charge rent, tolls and fees for the right to expose goods for sale in such markets and for the use of shops, stalls and standings therein.

(2) The Commissioners at a meeting may place the collection of such rents, tolls and fees under the management of such persons as may appear to them proper or may farm out such rents, tolls and fees on such terms and subject to such conditions as they may think fit.

(3) The Commissioners may by general or special order—

- (i) cancel or annul any right to expose goods for sale in such markets, and
- (ii) refuse the use of any shop, stall or standing thereon without compensation for such cancellation^a or refusal,

if the person, who has been granted that right or use or any of his servants—

- (a) closes his shop, stall or standing to the public, or
- (b) fails to supply to the public the articles ordinarily kept for sale thereon

at such times as may from time to time be fixed by the Commissioners.

(4) Municipal slaughter-houses may be situated within or, with the sanction of the District Magistrate, without the limits of the municipality.

The Bengal Municipal Act, 1932.

of 1932

*(Chapter XVII.—Markets and Slaughter-places.—
Secs. 403—405.)*

403. The Commissioners at a meeting may, at any time close any municipal market, municipal slaughter-house or municipal stock-yard, or any portion thereof, and the premises occupied for any market, slaughter-house or stock-yard or portion so closed may be disposed of as the property of the Commissioners.

Power to close municipal markets, slaughter-houses and stock-yards.

404. (1) No person shall, without the permission of the Commissioners, or, if the Commissioners have farmed out the rents and fees, without the permission of the farmer, sell or expose for sale any living thing or any article within a municipal market.

Prohibition of use of municipal market without permission.

(2) If any person contravenes the provisions of subsection (1) he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such market by the Commissioners, or by the farmer, as the case may be, or by any of the officers or servants of the Commissioners or of the farmer.

405. (1) In any municipality of which the Commissioners at a meeting have published an order in this behalf, no person shall—

Power to Commissioners to permit opening of new private markets.

- (i) establish a new private market for the sale of or for the purpose of exposing for sale any living thing intended for human food, or any other article of human food, except with the sanction of the Commissioners at a meeting :
- (ii) without or otherwise than in conformity with the terms of a license granted by the Commissioners at a meeting in this behalf, keep open any private market or wilfully or negligently permit any place to be used as a private market :

Provided that the Commissioners shall not—

- (a) refuse a license for the maintenance of a market lawfully established at the date of the publication of such order of the Commissioners at a meeting if application be made within six months from such date, except on the ground that the place where the market is established fails to comply with any conditions prescribed by, or under, this Act, or
- (b) cancel, suspend or refuse to renew any license granted under such order or by-laws framed in this behalf for any cause, other than the failure of the licensee to comply with the conditions of the licensee or with any provision of, or made under, this Act.

*(Chapter XVII.—Markets and Slaughter-places.—
Secs. 406—409.)*

(2) The Commissioners at a meeting may, by general or special order, cancel any license granted under this section if the private market is closed to the public or if a supply of the articles, for the sale of which the license was granted, is not kept available for sale to the public at such times as may from time to time be fixed by the Commissioners.

Power to close
unlicensed
places.

406. The Magistrate, on the application of the Commissioners at a meeting, may order any place which has been used as a market without a license under section 405 to be closed as a market-place, and thereupon may take order to prevent such place being used as a market, and no person shall thereafter sell or expose for sale on or in such place any living thing intended for human food or any article of food.

Licensing of
private
slaughter-
houses.

407. (1) Notwithstanding anything contained in section 402, the Commissioners at a meeting may, subject to such conditions as they may impose with the approval of the ¹[Provincial Government], grant and withdraw licenses, for the use of any premises either within or, with the sanction of the District Magistrate, without the limits of the municipality, for the slaughter of animals or animals of any specified description, for the sale of their flesh for human consumption.

(2) When such premises have been fixed by the Commissioners beyond municipal limits, the Commissioners shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within those limits.

Prohibition of
slaughter of
animals except
at licensed or
municipal
slaughter-house.

408. No person shall slaughter any animal for the sale of its flesh for human consumption within the municipality at any place other than a municipal slaughter-house or a slaughter-house licensed under section 407.

Power to require
paving and
draining of
private markets,
and to alter
structures in
such markets.

409. The Commissioners at a meeting may, by written notice, require the owner or occupier of any private market,—

- (a) to cause the whole or any portion of the floor of the market-building or market-place, to be raised or paved with dressed stone or other suitable material,
- (b) to cause such drains to be made in or from the market-building or market-place, of such material, size and description, at such level, and with such outfall as to the Commissioners may appear necessary, and
- (c) to cause a supply of water to be provided for keeping such market-building or market-place, in a clean and wholesome state, and,

¹See foot-note 3 on p 85 ante.

of 1932.]

*(Chapter XVII.—Markets and Slaughter-places.—
Secs. 410, 411.)*

- (d) to cause any shop, stall, shed or other structure in any private market to be altered or improved in such manner as the Commissioners at a meeting may consider necessary.

410. (1) The Commissioners at a meeting may—

Power to define limits of market and to require provision and maintenance of market approaches, etc.

- (a) define or determine the limits of any private market or declare what portions of such market shall be made part of the existing approaches, streets, passages and ways to and in such market, and
- (b) after hearing the owner or occupier of such market by written notice, require such owner or occupier to—
- (i) lay out, construct, alter, clear, widen, pave, drain and light, to the satisfaction of the Commissioners, such approaches, streets, passages and ways to or in such market, and
- (ii) provide such conveniences for the use of persons resorting to such market, and
- (iii) provide adequate ventilation and lighting of the market-building or any portion thereof, including shops and stalls,

as the Commissioners may think fit.

(2) The Commissioners at a meeting after hearing the owner or occupier of any private market may, by written notice, require such owner or occupier to maintain in proper order the approaches, streets, passages and ways to and in such market, and such other conveniences as are provided for the use of persons resorting thereto.

(3) The Commissioners shall cause a notice of the limits of any market, defined under sub-section (1), to be affixed in the English, Bengali, Hindi and Urdu languages as they may think necessary on some conspicuous spot on or near the building or place where such market is held.

411. (1) The Commissioners after giving the parties concerned an opportunity of being heard may—

Power to expel person contravening by-laws.

- (a) expel from any municipal market or municipal slaughter-house for such period as they may think fit any person who or whose servant has been convicted of contravening any by-law made under section 414 at the time in force in such market or slaughter-house,

*(Chapter XVII.—Markets and Slaughter-places.—
Secs. 412, 413.)*

- (b) prevent such person, by himself or his servants, from further carrying on any trade or business in such market or slaughter-house, or occupying any stall, shop, standing, shed, pen or other place therein, and
- (c) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the tenant, or the agent of the tenant of the owner or lessee of any private market or slaughter-house licensed under section 405 or section 407, as the case may be, has been convicted for contravention of any by-law made under section 414 and specified by the Commissioners at a meeting in this behalf, the Commissioners at a meeting may require such tenant or agent to remove himself from any such market or slaughter-house, within such time as may be mentioned in the requisition, and if he fails to comply with such requisition he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises by the owner or lessee thereof or by the servants of such owner or lessee.

(3) If it appears to the Commissioners at a meeting that in any such case the owner or lessee is acting in collusion with a tenant or agent convicted as aforesaid who fails to comply with a requisition issued under sub-section (2) the Commissioners at a meeting may, if they think fit, cancel the license of such owner or lessee in respect of such premises.

**Duration and
registration of
license.**

412. Every license granted under this chapter shall be in force until the end of the year during which it is granted, and shall be registered in a book to be kept for the purpose, containing the following particulars—

- (a) the name and address of the owner of the land, and the name and address of the owner of the market or slaughter-house, and of any lessee thereof;
- (b) the extent and boundary of the market or slaughter-house;
- (c) in the case of a market the description of the articles sold and the days on which it will be held.

**Registration of
transfers.**

413. Every transfer of any interest in such market or slaughter-house shall be registered by the transferee at the municipal office within two months from the date of the transfer, and any market or slaughter-house the transfer of interest in which has not been registered in accordance with the provisions of this section shall be deemed to be land used as a market or slaughter-house, as the case may be, without a license.

of 1932.]

(Chapter XVII.—Markets and Slaughter-places.—Chapter XVIIA—Fairs or melas.—Secs. 414, 414A.)

414. The Commissioners at a meeting may make by-laws—

By-laws for licensing, regulating and inspecting certain businesses.

- (a) for the lay-out, construction, regulation and inspection of markets and slaughter-houses, for the provision of a proper supply of water, the prevention of cruelty, the proper cleaning and general regulation and control of the sanitary condition of such places, the feeding and watering of animals kept in slaughter-houses or in yards attached to slaughter-houses, and the prevention of nuisances and obstruction ;
- (b) in the case of any municipal market or municipal slaughter-house for the orderly conduct of business and for fixing the rents and other charges to be levied ;
- (c) in the case of any municipal market and any market licensed under section 405 for the prohibition during such hours as they may fix of making purchases by persons other than persons buying for *bona fide* domestic purposes ;
- (d) prescribing the conditions on or subject to which and the circumstances in which, and the areas, or localities in respect of which, licenses may be granted, refused, suspended or withdrawn for the use of any private market or slaughter-house ; and
- (e) in a municipality where a reasonable number of slaughter-houses have been provided or licensed by the Commissioners, controlling and regulating the admission within municipal limits for purposes of sale of the flesh (other than cured or preserved meat) for human consumption of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act.

¹CHAPTER XVIIA.

Fairs or Melas.

¹414A. The Commissioners at a meeting may require the owner or lessee of a fair or *mela* or an owner or a lessee of land intending to establish a fair or *mela* thereon, to obtain a license in this behalf from the Commissioners on such terms and conditions, and on payment of such fees as may be prescribed.

Power of Commissioners to grant licenses for fairs or melas

¹This chapter containing sections 414A, 414B and 414C was inserted by section 36 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

The Bengal Municipal Act, 1932.

[Ben. Act XV

(Chapter XVIIA.—Fairs or melas.—Chapter XVIII.—
Weights and Measures.—Secs. 414B—416.)

Prohibition of
prostitution
within fairs or
melas.

414B. The Commissioners at a meeting may, by public notice issued at least one month before the date of any fair or *mela*, prohibit prostitution within such fair or *mela* or within half a mile thereof.

Rules for fairs
or melas.

414C. The ²[Provincial Government] may make rules regulating the granting of licenses for holding fairs or *melas* and fixing the fees in respect thereof.

CHAPTER XVIII.

Weights and Measures.

Standard weights
and measures in
municipalities.

415. (1) Where the Commissioners of any municipality, to which this section has been extended by the ²[Provincial Government], have made by-laws under section 417, prescribing the standard weights and measures to be used within the municipality, they may at a meeting by order published in the prescribed manner prohibit the use within the municipality of any maund, seer or tola weight, or of any cubit measure other than such as conforms with the standard prescribed in the said by-laws.

(2) When such order has been published, any person, authorized by them in this behalf, may at all reasonable times enter into and inspect any market, building, shop, stall or place used for the sale of any goods, food or drug, and may inspect any instruments for weighing, and any weights or measures found therein and test the same with other weights and measures, and may seize any such instruments for weighing, and any such weight or measure which the person so authorized reasonably believes to be false or to contravene any by-laws made by the Commissioners under section 417, and may take the same to be examined or tested by the officer who shall be appointed by the Commissioners for the purpose.

(3) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weighing, and all weights and measures kept therein.

Forfeiture of
false weights and
measures.

416. If it appears to the officer appointed under sub-section (2) of section 415 that the instrument for weighing or the weight or measure is false or contravenes any by-laws made by the Commissioners under section 417, he shall

¹See foot-note 1 on page 267, *ante*.

²See foot-note 3 on p. 85, *ante*.

The Bengal Municipal Act, 1932.

of 1932.]

(Chapter XVIII.—Weights and Measures.—Chapter XIX— Food and Drugs.—Secs. 417, 418.)

cause such instrument, weight or measure to be forfeited to the Commissioners in order that it may be destroyed or otherwise disposed of by the Commissioners.

417. The Commissioners at a meeting may make by-laws— Power to make by-laws.

(a) prescribing the standard weights and measures to be used within the municipality, namely—

(i) Government standard weights, that is to say, a maund consisting of forty seers, a seer consisting of eighty tolas and a tola consisting of one hundred and eighty grains ; or

(ii) a standard cubit consisting of eighteen inches for the measure of commodities other than land ; or

(iii) both the weights and the measure of length mentioned in sub-clauses (i) and (ii), respectively ;

(b) providing standards of the weights and measures so prescribed ;

(c) arranging for the safe keeping of such standards ;

(d) fixing times and places for testing and verifying any weight or measure, which is of the same denomination as one of such standards ;

(e) for stamping, in such manner as to prevent fraud any weight or measure which is found to be correct ; and

(f) fixing fees in respect of such verification and stamping.

CHAPTER XIX.

Food and Drugs.

Sale of Food and Drugs.

418. (1) No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf— Licensing of butchers and of sale of meat, etc., outside market.

(a) carry on in the municipality, or at any municipal slaughter-house without the municipality, the trade or business of a butcher, or

(Chapter XIX.—Food and Drugs.—Secs. 419—421.)

(b) habitually sell or expose for sale any animal, meat or fish intended for human consumption, in any place other than a municipal market or a private market.

(2) Nothing in clause (b) of sub-section (1) shall apply—

(a) to the sale of meat, or fish in any hotel or eating-house for consumption on the premises, or

(b) to fresh fish sold from, or exposed for sale on, a ship or boat in which it has been brought direct to the municipality after being caught at sea or in a river or in private fisheries or sold on the bank of a river or tank from which it was caught.

**Municipal
bakeries and
sweetmeat
shops.**

419. The Commissioners in their discretion may provide and maintain municipal bakeries and sweetmeat shops, and may at any time lease to any person such bakeries and shops on such terms and conditions as may to them seem proper.

**Licensing of
dairymen, bakers,
etc.**

420. (1) In any municipality to which the provisions of this section have been extended by the ¹[Provincial Government], no person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf carry on in the municipality the trade or business of a dairymen or milkman or of a baker, confectioner, ice or aerated-water manufacturer, or sweetmeat maker or of a keeper of a tea-shop, hotel or eating-house.

(2) In extending the provisions of this section to any municipality the ¹[Provincial Government] may exempt any of the trades or businesses mentioned in sub-section (1) from the operation of the section.

**Prohibition of
sale of diseased
animals or
unwholesome
articles intended
for human food.**

421. (1) No person shall sell, store for sale, expose or hawk about for sale, or keep for sale,

(a) any living thing intended to be used as food; or

(b) any other article of food or any drug intended to be used for human consumption,

which is diseased, unsound, unwholesome or unfit for human food, or, in the case of drugs, for medicine.

(2) In any prosecution under this section the court shall, unless and until the contrary is proved, presume that any such living thing, article of food, or drug found in the possession of a person who is in the habit of keeping such living thing or keeping or manufacturing such other article of food or drug for the purpose of human consumption has been so kept or manufactured, as the case may be, for sale by such person.

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter XIX.—Food and Drugs.—Secs. 422—426.)

422. No milk, bread-stuffs, cake, pastry, sweetmeats, confectionery or other article of food intended or commonly used for human consumption without further preparation by cooking shall be sold, exposed or kept or hawked about or stored for sale unless they be kept properly covered or otherwise guarded to the satisfaction of the Commissioners, so

Prohibition of the keeping of bread-stuffs, etc., otherwise than in covered receptacles.

Page 271—

Strike out sections 423, 424 and 425 and insert the following note, namely:—

istry of is for sale rugs used in tern medical ice.

(Repealed by West Bengal Act XXVIII of 1951, section 18.)

[No. 48, dated the 1st April, 1952.]

424. (1) No person shall compound, mix, prepare, dispense or sell any drug in any shop or place registered under section 423, unless he holds the prescribed certificate that he is a fit person to be entrusted with such duties.

Compounders' certificates.

(2) Any owner, occupier or keeper of any such shop or place, who employs any such uncertified person to perform any one or more of such duties, shall be liable to a fine as provided in this Act, and shall be further liable, at the discretion of the Magistrate, to forfeit his license :

Provided that this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect by the ¹[Provincial Government].

425. Nothing contained in section 423, or section 424 shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognised by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines recognised by such Pharmacopœia are dispensed upon prescription.

Savings as to sale of drugs used by practitioners of indigenous medicines.

Inspection, seizure and destruction of food and drugs.

426. If the Commissioners, Executive Officer, Health Officer, Sanitary Inspector, or any other officer authorised by the Commissioners in this behalf have or has reason to believe that any animal intended for human food is being slaughtered, or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorized under this Act, the Commissioners, Executive Officer, Health Officer, Sanitary Inspector or other officer as aforesaid may obtain a warrant from a Magistrate to enter at any time by day or by night, without notice, and inspect such place for the purpose of satisfying themselves or himself

Power to inspect place where unlawful slaughter of animals or sale of flesh is suspected.

¹See foot-note 3 on p. 85, ante.

(Chapter XIX.—Food and Drugs.—Secs. 427, 428.)

as to whether any provision of this Act or of any rule or by-law made under this Act, at the time in force, is being contravened thereat.

Power to inspect
*place where
living things,
etc., intended for
human
consumption,
are exposed
for sale.

427. (1) The Commissioners, Executive Officer, Health Officer, Sanitary Inspector, or any other officer authorized by the Commissioners in this behalf may—

- (a) at all reasonable times enter into and inspect any place in which any living thing intended for human food or any other article of food or any drug, is deposited for the purpose of sale or of preparation for sale, or to which such living thing, article of food, or drug intended for human consumption is brought for such purpose,
- (b) inspect and examine any such living thing or other article of food or drug which may be found in any place referred to in clause (a), and
- (c) inspect and examine any living thing intended for human food or any other article of food, or any drug intended for human consumption, which is being hawked about for sale.

(2) if, as a result of such inspection as is provided for in sub-section (1), a prosecution is instituted under this chapter, then the burden of proving that any such living thing, or other article of food or drug as aforesaid was not exposed or hawked about or deposited or brought for sale or for preparation for sale, or was not intended for human consumption shall rest with the party charged.

Power to seize
living things,
etc., intended
for human
consumption
which are
diseased, etc.

428. (1) If in the course of an inspection of a place made under section 427 any such living thing appears to the Commissioners, Executive Officer, Health Officer, Sanitary Inspector or other officer duly authorised by the Commissioners in this behalf to be diseased or if any article of food or drug appears to them or him to be unsound, unwholesome or unfit for human food or for medicine, as the case may be, or if any utensil or vessel used for preparing, or containing any such food or drug, which may be found in such place is of such kind or in such state as to render any food or drug prepared or contained therein unwholesome or unfit for human food or for medicine, as the case may be,

they or he may seize and carry away such living thing, article of food, drug, utensil or vessel as aforesaid in order that the same may be dealt with as hereinafter in this chapter provided:

Explanation.—(1) Meat subjected to the process of blowing shall be deemed to be unfit for human food.

(2) A vessel made of any corrosive metal or material notified in this behalf by the ¹[Provincial

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Chapter XIX.—Food and Drugs.—Sees. 429—431.)

Government] as dangerous to health, which is used for the preparation of liquid tea for sale shall be deemed to be of the kind referred to in sub-section (1).

(2) The Commissioners, Executive Officer, Health Officer, Sanitary Inspector or such other officer authorized as aforesaid may, instead of carrying away any living thing, article of food, drug, utensil or vessel seized under sub-section (1), leave the same in such safe custody as they or he thinks fit in order that the same may be dealt with as hereinafter in this chapter provided; and no person shall remove such living thing, article of food, drug, utensil or vessel from such custody or interfere or tamper with the same in any way while so detained.

429. (1) When any living thing, article of food, drug, utensil or vessel referred to in section 428 is seized under that section, it may, with the written consent (witnessed by two other persons) of the owner or the person in whose possession it was found, be forthwith destroyed and the expenses thereby incurred shall be paid by the owner or person in whose possession such living thing, article of food, drug, utensil or vessel was at the time of such seizure.

Destruction of living things, etc., seized under section 428.

(2) If such consent be not obtained, then, if any food or drug so seized is of a perishable nature, the officer seizing such food or drug may take it before a Magistrate and if it appears to the Magistrate that such food is unsound, unwholesome or unfit for human food, he shall condemn it and order it to be destroyed or so disposed of as to prevent it being sold or used for human food.

(3) A Magistrate shall not be bound to hear the owner of such food before passing an order under sub-section (2) and if in his discretion he deems it necessary to give a hearing to such owner, such hearing shall be merely for the purpose of determining whether such food is unsound, unwholesome or unfit for human food.

430. If any Magistrate is satisfied on the application of the Commissioners, Health Officer, Sanitary Inspector or any other officer authorized by the Commissioners in this behalf that there is just cause to believe that any diseased living thing intended for human food or any food or drug, which is unsound, unwholesome or unfit for human food or medicine is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of a municipality, for such consumption, he may grant a warrant to enter upon the premises of such person, and to search for and seize such living thing, article of food or drug.

Sale of unwholesome food or drug.

431. (1) Where any living thing, article of food, drug, utensil or vessel seized under section 428 is not destroyed by consent under sub-section (1) of section 429, or where an article of food so seized which is perishable is not dealt with

Taking before Magistrate animals, etc., seized under section 428.

(Chapter XIX.—Food and Drugs.—Secs. 432—434.)

under sub-section (2) of that section, it shall be taken before a Magistrate as soon as may be after such seizure.

(2) If it appears to the Magistrate that any such living thing is diseased or unsound or that any such food or drug is unsound, unwholesome or unfit for human food or for medicine, as the case may be, or that any such utensil or vessel is of such kind or in such state as is mentioned in sub-section (1) of section 428, he shall cause the same to be destroyed at the expense of the person in whose possession it was at the time of its seizure, or to be otherwise disposed of by the Commissioners so as not to be capable of being used as human food or medicine.

(3) If it appears to the Magistrate that any such living thing is not diseased or that any such food or drug is not unsound, unwholesome or unfit for human food or for medicine, as the case may be, or that any such utensil or vessel is not used for preparing, manufacturing or containing food or drugs which are unsound, unwholesome or unfit for human food or for medicine, as the case may be, the person from whose shop or place it was taken shall be entitled to have it restored to him, and it shall be in the discretion of the Magistrate to award him such compensation, not exceeding the actual loss which he has sustained, as the Magistrate may think proper.

Vesting of condemned food or drug in Commissioners.

Food and drugs directed to be destroyed, etc., to be property of Commissioners.

432. When any authority directs in exercise of any powers conferred by this chapter, the destruction of any living thing, food or any drug, or the disposal of the same so as to prevent its being used as food or medicine, the same shall thereupon be deemed to be the property of the Commissioners.

Slaughter of animals on bona fide religious or ceremonial occasions.

This chapter not to apply to slaughter of animals in certain cases.

433.* Nothing in this chapter shall apply to the slaughter of animals for a *bona fide* religious purpose or on a ceremonial occasion.

Purity of milk supply.

Regulation of dairies and milk-supply.

434. The Commissioners at a meeting may, and when required by the ¹[Provincial Government] shall, make by-laws regarding all or any of the following matters :—

(a) the registration of all dairymen, or persons selling milk, and dairies within the municipality ;

¹See foot-note 3 on p. 86, ante.

of 1932.]

(Chapter XIX.—Food and Drugs.—Sec. 434.)

- (b) the inspection by the Commissioners or persons authorized by them of dairies and dairy cattle within or without the municipality from which milk is supplied to the inhabitants of the municipality and of persons in or about dairies who have access to the milk or any milk-receptacle ;
- (c) the duties of dairymen or persons selling milk in connection with the occurrence of infectious or contagious disease amongst persons residing or employed in or about their premises, and the furnishing by them of the names and addresses of their customers and sources of supply, and their duties in connection with reporting the occurrence in any dairy cattle of diseases which are communicable to man and of any disease of the udder ;
- (d) the conveyance and distribution of milk, and the labelling or marking of receptacles used for the conveyance of milk ;
- (e) the ventilation, including air-space, lighting, cleansing, drainage and water-supply of dairies ;
- (f) the health and good condition of the milch-cattle in dairies ;
- (g) the cleanliness of dairies, milk-receptacles, dairy cattle and all persons employed in or about dairies ;
- (h) the protection of milk against infection or contamination ;
- (i) the prevention of the sale of infected, contaminated, or dirty milk, the prohibition of the sale and the disposal of any milk suspected of being infected, contaminated or dirty, and the closing of any dairy where such milk is kept for sale or the exclusion therefrom of any animal, the milk from which there is reason to believe has conveyed or is likely to convey any infectious disease ; and
- (j) any other measures and precautions which in the opinion of the [Provincial Government] may be necessary to secure and maintain the purity of the milk-supply.

¹See foot-note 3 on p. 85, *ante*.

(Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 435—439.)

CHAPTER XX.

Places for disposal of the Dead and Registration of Births and Deaths.

Registration of existing burial or burning-grounds.

435. Within three months from the date of the publication of a notification by the ¹[Provincial Government] extending this section to any municipality every place therein which is used as a burial or burning-ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners but no fee shall be charged for such registration.

Permission to make or resume burial and burning-grounds and registration of same.

436. The Commissioners at a meeting may in their discretion at any time grant permission for the formation and making of burial or burning-grounds, or for the renewed use of such grounds as, owing to disuse, have not been registered under section 435 and when such permission has been granted shall cause such grounds to be registered.

Provision of places to be used as burial or burning-grounds.

437. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, with the sanction of the Commissioner of the Division, provide fitting places either within or without the limits of the municipality to be used as burial or burning-grounds, and may impose such fee, as may be fixed in this behalf by the Commissioners at a meeting with the approval of the ¹[Provincial Government], in respect of every corpse buried or burnt within such burial or burning-grounds.

Prohibition to bury or burn in unregistered ground.

438. (1) After the expiration of the three months mentioned in section 435, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning-ground or has been provided by the Commissioners for the purpose; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

(2) Except with the special permission of the Commissioners no body shall be exhumed from any burial-ground except under the provisions of section 176 of the Code of Criminal Procedure, 1898; or of any other relevant enactment for the time being in force.

Act V of 1898.

Power to order certain burial and burning-grounds to be closed.

439. (1) The Commissioners at a meeting may, by public notice, order any burial or burning-ground, whether registered under section 435 or provided under section 437, which in their opinion is dangerous or likely to be dangerous to the health of persons living in the neighbourhood, or to be

¹See foot-note 3 on page 85, ante.

of 1932.]

(Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 440—442.)

offensive to such persons, to be closed from a date specified in the notice, and shall, in such case, if no suitable place for burial or burning exists at a reasonable distance, provide a fitting place for the purpose.

(2) When a notice is issued ordering the closing of any burial-ground under sub-section (1), private burial-places in such burial-grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf :

Provided that the limits of such burial-places are defined and that they shall only be used for the burial of members of the family of the owners thereof.

(3) If the Commissioners at a meeting are, at any time, of opinion that any place formerly used as a burial or burning-ground which has been closed under this section or under any other enactment or authority has, by lapse of time, become no longer dangerous to health and may, without risk of danger, be again used for the said purpose, they may direct that it be reopened for such purpose and their order shall be noted in the register kept under section 435.

440. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by section 439 may appeal to the ¹[Provincial Government], whose decision shall be final.

Appeals from orders under section 439.

441. (1) After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.

Power to cause corpses to be burnt or buried according to the religious tenets of the deceased.

(2) If a person dies in a hospital or temporary place of reception for the sick from any infectious disease, and the Health Officer or any registered medical practitioner certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place, except for the purpose of being forthwith buried or cremated, no person shall remove the body except for that purpose ; and the body when taken out of such hospital or place for that purpose shall be forthwith taken direct to the place of burial or cremation and there disposed of.

442. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, provide for the burial and burning of the dead bodies of paupers, free of charge, within the limits of the municipality.

Power to provide for burial of paupers free of charge.

¹See foot-note 3 on page 85, ante.

(Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 443—446.)

Power to license
fuel shops at
burning-grounds.

443. (1) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning-grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license is granted shall, from time to time at a meeting, prescribe a scale of rates for the sale of such articles; and no person not so licensed shall, within three hundred yards of any such burning-grounds, sell or offer for sale any such fuel or other article.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license as they may think fit, and any person to whom such license is granted, who charges for the sale of any such articles at any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled and shall be liable also to fine as provided in this Act.

Registration of
births and
deaths.

444. The Commissioners, when required by the ¹[Provincial Government] to do so, shall provide at a meeting for the registration of births and deaths within the limits of the municipality in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873, or any other similar Act for the time being in force.

Ben. Act
IV of
1873.

Appointment
of Registrar and
of Sub-Registrars
at burning-ghats
and burial-
grounds.

445. (1) This section shall be construed as being in addition to and not in derogation of the provisions of the Bengal Births and Deaths Registration Act, 1873.

(2) The Commissioners, when required by the ¹[Provincial Government] to do so, shall appoint at a meeting a person to be Registrar of Births and Deaths for the whole municipality and may also appoint and maintain at any burning-ghat or burial-ground a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

Information
required by
Bengal Act IV
of 1873 to be
given to such
Sub-Registrar.

446. Whenever a Sub-Registrar has been appointed for any burning-ghat or burial-ground under section 445, information of the particulars required by section 8 of the Bengal Births and Deaths Registration Act, 1873, to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the district as required by the said section.

¹See foot-note 3 on page 85, ante.

of 1932.]

(Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 447, 448.)

Section 9 of the said Act shall be applicable to all Sub-Registrars appointed under this Act.

Ben. Act
IV of 1873.

447. Whenever a birth or death occurs in any hospital within the limits of any municipality in respect of which the ¹[Provincial Government] has directed that all births and deaths shall be registered under the Bengal Births and Deaths Registration Act, 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such birth or death to the Commissioners in such form as the ¹[Provincial Government] may prescribe, and in such case no other person shall be required to give information of such birth or death to a Registrar under the said Act or to a Sub-Registrar under this Act.

Information of
births and
deaths in
hospital.

448. The ¹[Provincial Government] may make rules—

Power to
rules.

- (i) requiring the father or mother of every child born in any municipality or the occupier of the building in which such child is born or the medical practitioner or midwife in attendance at the time of birth within such specified period as may be fixed to give information of such birth to the Health Officer or Sanitary Inspector or other officer appointed for the purpose, and to furnish such particulars as may be prescribed by the ¹[Provincial Government] in this behalf ;
- (ii) requiring the nearest relative present at the death of, or in attendance during the last illness of, any person dying in any municipality or the medical practitioner, if any, who attended such person in his last illness or every other person present at the death, or, in their default, the occupier of the building in which the death occurred or some other person living in the building to report within a specified period such death to the Health Officer, Sanitary Inspector, Sub-Registrar appointed under section 445 or other officer appointed for the purpose, giving such particulars as the ¹[Provincial Government] may prescribe ;
- (iii) controlling and regulating the use and management of burial and burning-grounds and the disposal of corpses ;
- (iv) generally for securing the better registration of births and deaths.

¹See foot-note 3 on p. 85, ante.

(Chapter XXI.—Nuisance—Sec. 449.)

CHAPTER XXI.**Nuisance.****Nuisance.**

449. (1) The powers conferred by this chapter shall be deemed to be in addition to and not in derogation of any powers conferred by the other provisions of this Act.

(2) (a) The condition of—

- (i) any premises or part thereof of such a construction or in such a state or so situated or so dirty as to be a cause of annoyance to the inmates thereof, the neighbours or the public, or injurious or dangerous to health or unsafe, including places infested by, or providing haunts for mosquitoes or mosquito larvæ, flies or fly maggots, hook-worm larvæ or ova, or rats or other noxious animals, or insects, and thereby liable to favour the spread of infectious disease ;
- (ii) any street, tank, pool, ditch, gutter, water-course, sink, cistern, water-closet, earth-closet, privy, urinal, cesspool, drain, dungpit or ash-pit so foul or in such a state or so situated as to be a cause of annoyance to the inmates of the premises, the neighbours or the public, as the case may be, or injurious or dangerous to health ;
- (iii) any premises by reason of abandonment or disputed ownership or for any other reason remain untenanted and thereby become a resort of idle and disorderly persons ;
- (iv) any school, factory, workshop or other trade premises so unclean as to be a cause of annoyance to the inmates, the neighbours or the public, or injurious to health, or not so ventilated as to render harmless, as far as practicable, all gases, vapours, dust or other impurities, generated in the course of the work carried on therein, that are a cause of annoyance to the inmates, the neighbours or the public or injurious to health, or so overcrowded as to be injurious to the health of the persons therein engaged or employed, or not provided with sufficient and suitable privy or urinal accommodation ;
- (v) any offensive trade or business so carried on as to be injurious to health or unnecessarily offensive to the public ;
- (vi) any well, tank or other water-supply injurious or dangerous to health ;

of 1932.]

(Chapter XXI.—Nuisance.—Sec. 449.)

- (vi) any stable, cowshed or other building or enclosure in which any animal or animals are kept in such a manner or in such numbers as to be a cause of annoyance to the inmates of the premises, the neighbours or the public or injurious or dangerous to health ;
- (viii) any burial or burning-ground which in the opinion of the Commissioners at a meeting is injurious or dangerous or likely to be injurious or dangerous to the health of persons living in the neighbourhood or to the public or offensive to such persons ;
- (ix) any accumulation or deposit, including any deposit of animal or vegetable or mineral refuse, which is offensive to the neighbours or to the public or injurious or dangerous to health or any deposit of offensive matter, refuse or offal or manure within fifty yards of any public street, wherever situated ; and

(b) any act, omission, condition or thing which the ¹[Provincial Government] by notification shall declare to be a nuisance, or which after due inquiry by the Commissioners on the complaint of two or more persons residing in the neighbourhood is found by the Commissioners to be a cause of annoyance to the neighbours or to the inmates of the premises affected or to the public or to be dangerous or injurious to health ;

shall be deemed to be a nuisance to be dealt with under the provisions of this chapter :

Provided that no nuisance shall be deemed to have been committed in respect of any accumulation or deposit, necessary for the effectual carrying on of any business, trade or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business, trade or manufacture, and that the best available means have been taken for preventing injury or danger thereby to the public health.

“Author of a nuisance” in this chapter means a person by whose act, default, or sufferance the nuisance is caused, exists or is continued, whether he is an owner or occupier or both owner and occupier or any other person.

¹See foot-note 3 on p. 85, ante.

(Chapter XXI.—Nuisance.—Secs. 450—452.)

Inspection of Municipality for ascertaining existence of nuisance.

450. (1) The Commissioners shall cause to be made from time to time inspection of the municipality with a view to ascertain what nuisances exist calling for removal under the powers of this Act, and shall enforce so far as possible the provisions of this Act in order to remove the same, and otherwise put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all premises within the municipality.

(2) If the Commissioners or Health Officer or a Sanitary Inspector have or has reasonable grounds for believing that a nuisance exists in any premises, they or he may make an inspection of such premises at any hour, when the operations suspected to cause nuisance are believed to be in progress or are usually carried on or when the special conditions suspected to cause the nuisance are believed to exist, and may cause such work to be done as may be necessary for an effectual examination of the said premises, including the opening of the ground or surface, where necessary, and the testing of the drains.

(3) Where the ground or surface has been opened and no nuisance is found to exist, the Commissioners shall restore the premises at their own cost.

Municipal officer to give information as to nuisances.

451. Information of any nuisance under this chapter may be given to the Commissioners by any person and every municipal officer shall bring the existence of any nuisance to the notice of the Commissioners or cause it to be brought to their notice.

Notice to remove nuisance.

452. The Commissioners, if satisfied of the existence of a nuisance, shall serve a notice on the author of the nuisance or if he cannot be found, then on the owner or occupier of the building or premises on which the nuisance arises or continues, requiring him to remove it within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose and if the Commissioners think it desirable (but not otherwise) specifying any works to be executed to prevent a recurrence of the said nuisance :

Provided that—

- (a) where the nuisance arises from any want or defect of a structural character, or where the building or premises are unoccupied, the notice shall be served on the owner ;
- (b) where the author of the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner or occupier of the building or premises, the Commissioners shall remove the same and may do what is necessary to prevent the recurrence thereof.

of 1932.]

(Chapter XXI.—Nuisance.—Secs. 453, 454.)

453. (1) If the person on whom a notice to remove a nuisance has been served under section 452 fails to comply with any of the requirements thereof within the time specified, or if the nuisance, although removed since the service of the notice, is in the opinion of the Commissioners likely to recur on the same premises, the Commissioners shall cause a complaint relating to such nuisance to be made before a Magistrate, and such Magistrate shall thereupon issue a summons requiring the person on whom the notice was served to appear before him.

Procedure in case owner fails to comply with notice.

(2) If the Magistrate is satisfied that the alleged nuisance exists, or that, although removed, it is likely to recur on the same premises, he shall make—

- (a) on the author thereof, or the owner or occupier of the premises, as the case may be, an order requiring him to comply with all or any of the requirements of the notice or otherwise to remove the nuisance within a time specified in the order and to do any works necessary for that purpose or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence, or an order both requiring the removal and prohibiting the recurrence of the nuisance, or
- (b) an order on the Commissioners directing them to remove or prevent the recurrence of the nuisance or both, at the expense of the author thereof or the owner or occupier of the premises, as the case may be.

(3) Before making any order the Magistrate may, if he thinks fit, adjourn the hearing or further hearing of the case until an inspection, investigation or analysis in respect of the nuisance alleged has been made by some competent person.

(4) Any costs incurred by the Commissioners in executing an order of the Magistrate under clause (b) of subsection (2) shall be payable on demand, and if not paid on demand, may be recovered by distress and sale of the movable property of the defaulter.

454. Whenever it appears to the satisfaction of the Magistrate that the author of the nuisance or that the owner or occupier of the premises is not known or cannot be found, the Magistrate may at once order the Commissioners to execute the works thereby directed and the cost of executing the same shall be payable on demand by the defaulter, if subsequently found, and if not paid on demand within fifteen

Magistrate may order local authority to execute works in certain cases.

[Ben. Act XV

(Chapter XXI.—Nuisance.—Chapter XXII.—General.—
Secs. 455—457.)

days from the date of the execution of the work, may be recovered by distress and sale of the movable property of the defaulter, if known.

Award of compensation.

455. The Magistrate in making an order under this chapter may, if he is of opinion that the person on whom a notice has been served to remove a nuisance or any other person would have been entitled to compensation, had the proceedings been taken otherwise than under this chapter, award such compensation to such person.

CHAPTER XXII.**General.***Education.***Education Committee.**

456. In every municipality there shall be constituted an Education Committee consisting of—

- (a) an educational officer or other person interested in education appointed by the ¹[Provincial Government] ;
- (b) not less than two, or more than four Commissioners appointed from among themselves by the Commissioners at a meeting ; and
- (c) not more than three residents of the municipality not being Commissioners, appointed by the Commissioners at a meeting.

The Education Committee shall appoint its own Chairman and Secretary.

Duties of Education Committee.

457. It shall be the duty of the Education Committee, subject to the control of the Commissioners at a meeting and to the rules made by the ¹[Provincial Government]—

- (i) to superintend all matters connected with the finance, accounts, maintenance and management of all schools, libraries and museums maintained by the Commissioners, and
- (ii) to determine the conditions to be complied with when grants are made by the Commissioners to schools, libraries and museums.

¹See footnote 3 on p. 85, ante.

of 1932.]

(Chapter XXII.—General.—Secs. 458—460.)

458. (1) The ¹[Provincial Government] may transfer to the Commissioners such funds as it may deem necessary for expenditure on—

Transfer of funds by Government for education.

- (a) the improvement of any school or class of schools within the municipality under private management ; or
- (b) the maintenance or improvement of any school or class of schools maintained and managed by the Commissioners ; or
- (c) the provision of buildings to be used as students' hostels in connection with any school mentioned in clause (a) or clause (b).

(2) The Commissioners shall be charged with, and be responsible for, the proper distribution of funds transferred under sub-section (1).

459. The ¹[Provincial Government] may make rules—

Powers to make rules regarding maintenance and management of schools.

- (i) determining the classes of schools which may be maintained or aided by the Commissioners ;
- ²(ia) regulating the maintenance and management of such schools ;
- (ii) regulating the construction and repair of buildings connected with such schools ;
- (iii) regulating the appointment and salaries of masters and assistant masters of such schools ;
- (iv) regulating the establishment of scholarships generally, or for the furtherance of technical or any other special form of education ; and
- (v) regulating the conduct of business and duties of Education Committees.

³ *Hospitals and dispensaries.*

³459A. The ¹[Provincial Government] may make rules regulating the establishment, maintenance and management of hospitals and dispensaries by the Commissioners.

Power to make rules regulating the establishment, maintenance and management of hospitals and dispensaries.

Sarais, dharamsalas and lodging-houses.

460. The Commissioners at a meeting may make by-laws providing—

Power of Commissioners to regulate sarais, dharamsalas and lodging-houses by by-law.

- (a) for the registration and inspection of *sarais, dharamsalas* and other lodging-houses ;

¹See foot-note 3 on p. 85, *ante*.

²Clause (ia) was inserted by s. 37 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³This sub-heading and section 459A were inserted by s. 38, *ibid*.

(Chapter XXII.—General.—Secs. 461, 462.)

- (b) for the prevention of overcrowding and the promotion of cleanliness and ventilation therein ;
- (c) for the notices to be given and the precautions to be taken in the case of the outbreak therein of any infectious or contagious disease ; and
- (d) generally for the proper regulation of *sarais*, *dharam-salas* and other lodging-houses.

Hackney-carriages.

Power to
Commissioners to
cancel license
issued to the
owner or driver
of any hackney-
carriage.

461. The Commissioners may cancel any license issued to any owner or driver of any hackney-carriage under the Calcutta Hackney-Carriage Act, 1919, as extended to any area within a municipality, if such owner or driver does not at such times as may from time to time be fixed by the Commissioners keep available for hire to the public, and ply for hire when required, the hackney-carriage and horses in respect of which the license has been granted under that Act ; and on cancellation of such license the Commissioners may require such owner or driver, or any other person in whose possession the driver's ticket or license may be, to surrender the same to them forthwith.

Ben. Act I
of 1919.

Survey.

Survey of a
municipality.

462. (1) The Commissioners at a meeting may order that a survey or demarcation of boundaries shall be made of any or all of the lands and buildings situated in the municipality and may move the ¹[Provincial Government] to direct that all or any of the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such municipality, ²[and if the Provincial Government³ so directs then notwithstanding anything contained in that Act, all or any of its provisions shall, *mutatis mutandis*, apply and extend to such municipality].

Ben. Act I
of 1887.

(2) Where it appears to the ¹[Provincial Government] that a survey or demarcation of boundaries should be made of all or any of the lands and buildings situated in a municipality, it may, by order, call on the Commissioners to make such a survey or to show cause why they should not be required to do so.

(3) The ¹[Provincial Government] shall consider any objections and suggestions, which may be submitted by the Commissioners at a meeting and may either withdraw its order or direct that a survey shall be made.

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were added by s. 39 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

(Chapter XXII.—General.—Secs. 463—465.)

(4) Where the order is made absolute, the ¹[Provincial Government] may depute any person to make the survey and may require the Commissioners to defray from the Municipal Fund the cost of such survey, including the remuneration of the person deputed by the ¹[Provincial Government].

(5) Where a survey has been made under this Act of all or any of the lands and buildings situated in a municipality, the ¹[Provincial Government] may call on the Commissioners to make provision for the maintenance of such survey.

463. The Commissioners at a meeting may make by-laws—

Powers to make by-laws for maintenance of survey maps.

- (a) requiring the owner of any land or building to give notice to them of any alteration in the boundary of such land or of the erection of any new building thereon or of any material alteration or addition to a building,
- (b) providing for the erection from time to time and for the maintenance by owners of lands or buildings of suitable boundary marks defining the limits of all lands which form separate holdings.

Map of municipal properties and municipal institutions.

464. The Commissioners shall maintain at the municipal office a map showing the position of all lands and buildings belonging to the Commissioners and of all municipal institutions and all public streets and drains.

Commissioners to maintain map showing all municipal properties, public streets and drains.

Dogs.

464A. The Commissioners may, by public notice, require that every dog shall wear a collar to which shall be attached a token to be issued by the Commissioners, and may, from time to time, by like notice, announce that, with effect from a date to be specified in the notice, every dog found wandering about streets or public places without a collar bearing such token will be liable to be destroyed or otherwise disposed of.

Power to require that dogs shall carry tokens.

*** 465.** (1) The Commissioners, by any person authorized by them in this behalf, may—

Disposal of mad and stray dogs.

- (i) destroy or cause to be destroyed, or confine, or cause to be confined, for such period as the Commissioners may direct, any dog suffering from any

¹See foot-note 3 on page 85, ante.

²Section 464A was inserted by s. 40 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter XXII.—General.—Chapter XXIII.—Hill Municipalities.—Secs. 466—469.)

loathsome disease or from rabies, or reasonably suspected to be suffering from rabies, or bitten by any dog or other animal suffering or suspected to be suffering from rabies; and

¹(ii) after a date specified in this behalf in a notice published under section 464A, destroy or cause to be destroyed or otherwise dispose of any dog found wandering about streets or public places without a collar bearing a token issued by the Commissioners under section 464A.

(2) No damages shall be payable by the Commissioners or by any person authorized under this section in respect of any dog confined, destroyed or otherwise disposed of under this section.

Noxious animals.

Rewards for destruction of noxious animals.

The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of the municipality.

Licenses.

Holder of license to produce it when required.

467. Every person to whom a license has been granted under this Act shall, at all reasonable times while such license remains in force, if required so to do by the Commissioners or by any person authorized by them in that behalf, produce such license to the Commissioners or to the person so authorized.

Suspension or revocation of license, etc.

468. Any Magistrate before whom any person is convicted of an offence against the provisions of this Act, relating to the use of any place for a purpose for which a license is required or of the non-observance of any of the by-law or conditions relating thereto made or imposed under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license, and the Commissioners, upon the conviction of any person for a second or subsequent like offence, may cancel his license.

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CHAPTER XXIII

Put an asterisk against section 465, and insert the following footnote after footnote 1, namely:—

*In the application of the Act to the district of Darjeeling, after sub-section (2) of section 465 add the following sub-section, namely:—

"(3) The Commissioners may, in particular, and without prejudice to the generality of the foregoing power in sub-section (1) and the power conferred by clause (i) of section 392, make by-laws regarding the following matters:—

- (a) Compulsory licensing of dogs and wearing of tokens;
- (b) Imposition of a fee payable for such license or token or both;
- (c) Seizure of dogs without tokens and custody of dogs seized;
- (d) Seizure, confinement, inoculation or destruction of dogs suspected to be suffering from rabies;
- (e) Compulsory notification of rabies;
- (f) Inspection of dogs;
- (g) Issue of muzzling orders; and
- (h) Charges payable in respect of dogs seized or kept in custody."

(Added by paragraph XVI of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter XXIII.—Hill Municipalities.—Secs. 470—472.)

Definitions.

470. (1) The definition of drain under section 3 of this Act shall, in the case of a hill municipality, be deemed to include a *jhora*, water-course or natural drainage line, and the ¹[Provincial Government] may, by notification, define for the purpose of this Act the limits of any *jhora*, water-course, channel or natural drainage line within a hill municipality.

Extension of definitions of "drain" and "masonry building".

(2) For the purposes of Chapter X in its application to hill municipalities the term masonry building shall be deemed to include a framed building.

471. In this chapter—

Definitions

- (i) "Government road" means a road, street, square, court, alley or passage maintained ²[by the Central or the Provincial Government] or at the public expense ;
- (ii) "private bridge" means any bridge which is not a public bridge as defined in this section ;
- (iii) "private drain" means any drain which is not a public drain as defined in this section ;
- (iv) "private road" means any road, street, square, court, alley or passage which is not a public road or Government road as defined in this section ;
- (v) "public bridge" means a bridge on or over which a public road or any public work is carried, and the property in which is for the time being vested in the Commissioners ;
- (vi) "public drain" means any drain which is vested in the Commissioners ;
- (vii) "public road" means a "public street" as defined in section 3 of this Act, but except in sections 231, 237, 251, 253 and rule 5 of Schedule VIII shall be deemed to exclude a Government road.

Roads.

472. (1) If it appears to the Commissioners that any public road or part thereof—

Absolute closing of public road.

- (a) threatens the stability or security of any hillside or bank or any immovable property thereon, or

¹See foot-note 3 on p. 85, *ante*.

²These words were substituted for the words "by the Government" by schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter XXIII.—Hill Municipalities.—Secs. 473, 474.)

- (b) in consequence of its condition or its situation with reference to any adjacent hillside or bank cannot be efficiently maintained or required except at a cost, which, in their opinion, is unreasonable,

the Commissioners may, by public notice, declare such road or part to be absolutely closed:

Provided that the Commissioners shall, before declaring any public road or part thereof to be closed, be bound to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist.

- (2) From the date of any notice published under sub-section (1) in respect of any public road or part thereof, the Commissioners shall not be bound to maintain or repair such road or part; and the site thereof may be disposed of or otherwise dealt with in such manner as the Commissioners may determine:

Provided that, if the Commissioners determine to sell or to let on lease or otherwise transfer any part of such site which is adjacent to any private land or building, the owner of such land or building shall have a prior right to buy or take on lease such part at a reasonable rate.

Control over
private roads and
bridges.

- 473.** All private roads and bridges shall be subject to the inspection and control of the Commissioners.

Control over
construction or
alteration of
private roads.

- 474.** (1) Every person who intends to construct, re-construct or alter a private road shall send to the Commissioners an application for permission to execute the work.

(2) Every such application shall be accompanied by the documents or particulars prescribed in this behalf in Schedule VII.

(3) Every person applying for permission to construct, re-construct or alter a private road must further mark out on the ground the alignment of the road for inspection by the Commissioners or an officer authorized by them in this behalf.

(4) The permission referred to in sub-section (1) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in the said Schedule VII.

(5) No work referred to in sub-section (1) shall be commenced without the written permission of the Commissioners.

of 1932.]

(Chapter XXIII.—Hill Municipalities.—Secs. 475—479.)

475. If it appears to the Commissioners that any private road is so situated or is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner—

Re-construction, etc., of private road.

- (a) to re-construct, re-grade, divert, alter or repair such road, or
- (b) to make a revetment or retaining-wall on either side or both sides of such road, or
- (c) to take such other order with such road as may be specified in the notice.

476. If it appears to the Commissioners that waterway ought to be provided on any private road or that the waterway provided on any private road ought to be enlarged they may, by written notice, require the owner of the road—

Provision or enlargement of waterway on private road.

- (a) to provide and maintain waterway, or
 - (b) to enlarge the existing waterway,
- as the case may require.

477. Whenever any private road is to be constructed, re-constructed, re-graded, diverted, altered or repaired, and whenever waterway for any private road is to be provided or enlarged, in pursuance of section 474, section 475 or section 476, the work shall be executed in accordance with the rules contained in Schedule VII, so far as they are applicable to the particular case.

Rules as to construction, etc., of private roads and bridges.

478. If it appears to the Commissioners that the existence of any private road threatens the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner to close the road and to take such order with the site thereof as they may consider necessary for the stability or security of such hillside, bank or property and as may be prescribed in the notice :

Power to close private road.

Provided that no notice shall be issued under this section in respect of any private road which constitutes the only approach to a building, unless, in the opinion of the Commissioners, another road affording a suitable approach to the building can be constructed at reasonable expense.

479. (1) Whenever any building, wall, revetment or other erection, or any part thereof, or any stone, tree, soil or debris from private premises, falls down and obstructs any public road or drain, the Commissioners may cause the obstruction to be removed.

Removal of materials falling upon or into public road or drain.

[Ben. Act XV]

(Chapter XXIII.—Hill Municipalities.—Secs. 480—482.)

(2) All stone and trees so removed shall be separately heaped near the spot, and a notice shall be affixed in the vicinity calling upon the persons from whose premises the stone or trees or any of the same has or have fallen to take away the same.

(3) If, in the course of removing any obstruction under sub-section (1), it be found necessary to break up or blast any stone or to cut up any tree, the work shall be executed by the Commissioners; and if any persons desire, in pursuance of a notice affixed under sub-section (2), to take away any stone or tree which has been so dealt with, they must first pay to the Commissioners the expenses incurred by them under this sub-section.

(4) If such stone or trees be not taken away by the said persons within seventy-two hours after the affixing of the said notice, or within any further period allowed by the Commissioners, the same shall become the property of the Commissioners.

Removal of debris falling upon or into private road or drain.

480. If it appears to the Commissioners that any debris which has fallen upon or into any private road or drain ought to be removed, they may—

- (a) cause such debris to be removed at the expense of the owner of the road or drain, or
- (b) by written notice require the said owner to remove the debris.

Power to close a road or part of a road for repairs or other public purpose.

481. The Commissioners may close temporarily any public road or part of a public road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain or bridge, or for any other purpose: provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

Drains.

Control over construction or alteration of private drains.

482. (1) Every person who intends to construct, reconstruct, alter, stop-up or obstruct any private drain shall send to the Commissioners an application for permission to execute the work.

(2) Every such application shall be accompanied by a general description of the drain.

(3) The permission referred to in sub-section (1) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in Schedule VIII.

of 1932.]

(Chapter XXIII.—Hill Municipalities—Secs. 483—485.)

(4) No work referred to in sub-section (1) shall be commenced without the written permission of the Commissioners.

483. (1) The Commissioners may, by written notice, require the owner of any land or building—

Re-construction, repair, etc., of private drains, gutters, etc.

- (a) to re-construct, enlarge, extend, alter, repair, make efficient, stop-up or remove any drain belonging to such land or building, or
- (b) to alter the inclination or direction of any such drain, or
- (c) to provide movable coverings or gratings for any such drain of such nature as may be specified in the notice, or
- (d) to carry any such drain to such point of outlet or of junction with some other drain as may be specified in the notice.

(2) The Commissioners may, by written notice, require the owner or occupier of any building—

- (a) to provide and maintain a sufficient number of suitable roof-gutters and down pipes or masonry platforms for carrying water from the roof of the building into such drains as may be specified in notice, or
- (b) to renew, alter, repair or remove any such gutters, pipes or platforms already provided for the building.

(3) The said gutters must be of such dimensions, and have such slope, and the said pipes must be of such dimensions, and the bends in such pipes must be made at such angles, as may be prescribed by rules made by the Commissioners at a meeting.

484. If any land or building is not drained to the satisfaction of the Commissioners, they may, by written notice, require the owner to provide a drain therefor, at such inclination, and to such point of outlet or of junction with some other drain as may be specified in the notice.

Power to require provision of private drain

485. (1) If it appears to the Commissioners that any lands or buildings belonging to different owners can be drained, or the drainage thereof improved, more economically or advantageously in combination than separately, the Commissioners may cause such lands or buildings to be drained, or the drainage thereof to be improved, in such manner as they may consider suitable.

Private drainage in combination.

(Chapter XXIII.—Hill Municipalities.—Secs. 486, 487.)

(2) The Commissioners may cause any drain which has been provided or improved under sub-section (1) to be maintained or repaired in such manner as they may consider suitable.

(3) All expenses incurred under sub-section (1) or sub-section (2) in connection with the drainage of any lands or buildings, shall be paid by the owners of such lands or buildings in proportion to the benefits derived by them respectively.

(4) The said proportion shall be determined by the Commissioners.

Safety of the hillside.

Power where buildings, etc., threaten the stability of other immovable property.

486. If it appears to the Commissioners that any building or portion of a building, or anything affixed to a building or any wall or structure on any land, is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon,

the Commissioners may, by written notice, require the owner of such land or building—

- (a) to take down such building, portion, thing, wall or structure and remove the materials, or
- (b) to secure or repair such building, portion, thing, wall or structure, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof or to take such other order therewith as may be prescribed in the notice, and
- (c) in case (a), also to take such order with the site of such building, wall or structure, for ensuring the stability or security of any hillside or bank or any immovable property thereon, as may be prescribed in the notice.

Power where hillside or bank threatens the safety of buildings.

487. If it appears to the Commissioners that the condition or situation of any hillside or bank, being private property, is such as to threaten the safety of any building, and that the safety of such building cannot be ensured by taking action under section 486 and also that such building threatens the safety of some other building, they may, by written notice, require the owner of such first mentioned holding—

- (a) to take down the building and remove the materials, or
- (b) to secure the building, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice

of 1932.]

(Chapter XXIII.—Hill Municipalities.—Secs. 488—490.)

and may also, by written notice, require the owner of such other building to secure the same, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice.

488. If it appears to the Commissioners that the condition or the situation of any land, being private property, is such as to threaten the stability or security of any hill-side or bank or any immovable property thereon, the Commissioners may, by written notice, require the owner of the land to do all or any of the following things, namely :—

Power to require revetting, turfing or sloping.

- (a) to construct and maintain a revetment, retaining-wall or toe-wall upon any part of the land ;
- (b) to re-construct, enlarge, strengthen, alter or repair any revetment, retaining-wall or toe-wall already standing on the land ;
- (c) to turf the land or any portion thereof ;
- (d) to slope the land or any portion thereof.

489. If any owner to whom a notice is issued under section 488 represents to the Commissioners, within fifteen days after the service of the notice, that the work required by the notice will directly and substantially benefit the owners of any adjacent buildings or land,

Execution of work where owners of adjacent property would be benefited.

the Commissioners may, after hearing all the owners concerned, themselves cause the said work to be executed ;

and the expenses thereby incurred shall be recovered from any or all of such owners, in such proportions as the Commissioners may direct.

490. If it appears to the Commissioners that lands or buildings belonging to two or more owners can be protected, by the execution of works of the nature referred to in section 488, more economically or advantageously in combination than separately,

Power to execute work in combination.

the Commissioners may themselves cause such works or any of them. to be executed, maintained and kept in repairs ;

and the expenses thereby incurred shall be recovered from the said owners, in such proportion as the Commissioners may direct.

(Chapter XXIII.—Hill Municipalities.—Secs. 491—494.)

Power to execute works where public road, drain, revetment or retaining-wall is affected.

491. Notwithstanding anything contained in section 488, the Commissioners may, at any time, themselves cause any revetment, retaining-wall or toe-wall to be constructed, re-constructed, enlarged, strengthened, altered or repaired on any private land immediately abutting upon any public road, drain, revetment or retaining-wall ;

and the expenses thereby incurred shall be paid by the Commissioners and the owner of such land in such proportions as the Commissioners may direct.

Rules as to revetting, turfing and sloping.

492. Whenever any revetment, retaining-wall or toe-wall is to be constructed, re-constructed, enlarged, strengthened, altered or repaired, or any land is to be turfed, or sloped in pursuance of sections 475, 486, 487, 488, 489, 490 or 491, the work shall be executed in accordance with the rules contained in Schedule IX, so far as they are applicable to the particular case.

Control over occupation of buildings.

Power to prohibit occupation of unsafe or insanitary building.

493. (1) If it appears to the Commissioners that any building or the site thereof is, in consequence of its condition or of its situation with reference to any hillside or bank, unsafe,

they may, by written notice, prohibit the owner or any other person from occupying or continuing to occupy the building or from permitting it to be occupied until the building or the site, as the case may be, is rendered safe to the satisfaction of the Commissioners.

(2) If it appears to the Commissioners that the drainage of, or the latrine accommodation provided for, any masonry or framed building is defective,

they may, by written notice, prohibit the owner from letting the building for occupation until the defects have been remedied to their satisfaction.

Appeal.

Appeal to specially appointed officer.

494. (1) The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], appoint an Engineer to hear appeals under this Act in respect of hill municipalities.

(2) An appeal shall lie to the said Engineer from any order (not being an order apportioning expenses) or requisition made under sections 364, 474, 482, 485, 486, 487, 488, 489, 490, 491 or 493.

¹See foot-note 3 on page 85, *ante*.

²See foot-note 1 on page 89, *ante*.

of 1932.]

(Chapter XXIII.—Hill Municipalities.—Secs. 495—498.)

495. An appeal shall lie to the Commissioner of the Division from any order apportioning expenses incurred in pursuance of sections 485, 488, 490 or 491. Appeal to Commissioner of the Division.

496. Every appeal under section 494 or section 495 must be presented within a period of thirty days after the date of the order or requisition against which the appeal is made :— Limitation of time for appeal.

Provided as follows :—

- (a) if in any case the said period expires on a day when the office of the aforesaid Engineer, or Commissioner is closed, the appeal may be presented on the day that the said office is reopened ;
- (b) any appeal may be admitted after the expiration of the said period when the appellant satisfies the appellate authority that he had sufficient cause for not presenting the appeal within such period.

497. (1) In dealing with any appeal preferred to him under section 495 the Commissioner shall be assisted by two assessors, who shall be selected and summoned by him for each appeal or group of appeals from a list to be prepared annually by the Deputy Commissioner : Assessors in appeals to Commissioner of the Division.

Provided that, if any assessor so summoned fails to appear, the appeal may be heard in his absence.

(2) The assessors, if present, shall be consulted by the Commissioner, and their opinion shall be recorded in writing ; but the Commissioner shall not be bound to conform to their opinions.

498. (1) If the Engineer appointed under section 494, or the Commissioner of the Division, rejects any appeal preferred to him under this Act, he shall, by written order, specifically state the grounds for such rejection. Record of decision on appeal or reference.

(2) The said Engineer shall, when deciding any reference made to him under this Act, specifically state in writing the grounds for his decision.

(3) A copy of all orders passed by the said Engineer or Commissioner on any such appeal, or by the said Engineer on any such reference, shall forthwith be forwarded by him

(Chapter XXIII—Hill Municipalities—Sec. 499.)

to the Commissioners, who shall thereupon inform the appellant, or the person who made the reference, as the case may be, of such orders.

By-laws.

Additional
power to make
by-laws in hill
municipalities.

499. (1) In addition to any by-laws that they may make under any other section of this Act, the Commissioners of a hill municipality may, at a meeting, make by-laws—

- (a) enforcing, regulating or prohibiting the cutting or destroying of trees or shrubs and the planting and maintenance of particular kinds of trees or shrubs, and regulating or prohibiting the making of excavations or removal of soil or quarrying ; and providing for the alteration, repair and proper maintenance of buildings and compounds, for the closing of roads and by-paths and for the general protection of the surface land on any hillside where such by-laws appear to the Commissioners to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, the protection of land against erosion, or the deposit thereon of sand, gravel or stones ;
- (b) regulating the rule of the road ;
- (c) rendering licenses necessary within the municipality for animals, vehicles and other conveyances let out on hire for a day or part thereof ;
- (d) prescribing the conditions subject to which such licenses may be granted, refused, suspended or withdrawn ;
- (e) regulating the charges to be made for the hire of such animals, vehicles and other conveyances ;
- (f) preventing the straying of poultry ;
- (g) preventing or regulating the grazing or straying of cattle on hillsides or banks ; and
- (h) regulating any of the matters referred to in sections 474, 477, 482 and 492.

(2) The word “cattle”, as used in clause (g), shall have the same meaning as in the Cattle Trespass Act, 1871.

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

CHAPTER XXIV.

Penalties.

500. (1) Whoever commits any offence by—

Certain offences
punishable with
fine.

(a) contravening any provision of any of the sections, sub-sections, clauses of sections or provisos of this Act mentioned in the first column of the following table, or

(b) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses or provisos,

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

(2) Whoever, after having been convicted of any offence referred to in clause (a) or clause (b) of sub-section (1), continues to commit such offence shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table.

Explanation.—The entries in the second column of the following table headed “Subject” are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof.

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. 1 | Subject. 2 | Fine which may be imposed. 3 | Daily fine which may be imposed. 4 |
|--|---|---|--|
| Section 62, sub-section (2), clause (e). | Commissioners unlawfully acquiring share or interest or holding office of profit. | Five hundred rupees. | |
| Section 72, sub-section (2). | Municipal officers and servants unlawfully acquiring share or interest in contract. | Two hundred and fifty rupees. | |
| Section 127 .. | Requisition for list of the number of persons residing in a holding. | One hundred rupees. | |
| Section 134 .. | Requisition for returns, rent or annual value and description of holdings. | Twenty rupees .. | Five rupees. |
| Section 143 .. | Obligation to give notice of re-occupation of unoccupied holding. | Twenty-five rupees .. | Five rupees. |
| Section 144 .. | Obligation to give notice of transfer of title in land or building. | Twenty-five rupees .. | Five rupees. |
| *Section 144A .. | Obligation to give notice of transfer of title in land or building by inheritance. | Twenty-five rupees .. | Five rupees. |
| Section 164 .. | Unlawful purchase at a municipal auction. | Five hundred rupees. | |
| Section 171, sub-section (1). | Obligation to forward statement of carriages and animals liable to taxation. | Twenty rupees. | |
| Section 172 .. | Obligation to forward statement of carriages and animals liable to taxation. | Twenty rupees. | |
| Section 175 .. | Keeping or possessing carriage or animal without a license. | Three times the amount payable for license, exclusive of the amount so payable. | |
| Section 178, sub-section (2). | Failure to attend when summoned. | Fifty rupees. | |
| *Section 182 .. | Failure to take out a license | Twice the amount payable for license, exclusive of the amount so payable. | |

¹These entries were inserted by s. 42(i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²These entries were inserted by s. 42(ii), *ibid.*

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. 1 | Subject. 2 | Fine which may be imposed. 3 | Daily fine which may be imposed. 4 |
|--|---|---|--|
| Section 188 .. | (i) Keeping or possessing cart not duly registered. | Twice the amount payable for license, exclusive of the amount so payable. | |
| | (ii) Failing to affix registration number to cart. | Five rupees. | |
| Section 197 .. | Unlawfully refusing to leave a municipal ferry boat or to remove goods therefrom. | Ten rupees. | |
| Section 198 .. | Keeping unauthorised ferry boat. | Fifty rupees | .. Ten rupees. |
| Section 204 .. | Refusing to pay or avoiding payment of toll. | Fifty rupees. | |
| Section 207 .. | Failure to hang up table of tolls. | Fifty rupees | .. Ten rupees. |
| Section 211 .. | Demanding or taking unauthorised toll. | Fifty rupees. | |
| Section 218, sub-section (1). | (i) Prohibition of erection of, or addition to, building or wall within street alignment prescribed under section 217. | Two hundred and fifty rupees | Twenty-five rupees. |
| | (ii) Requisition to remove building erected or added within street alignment prescribed under section 217. | Fifty rupees | .. Ten rupees. |
| Section 218, sub-section (3). | Prohibition of erection of, or addition to, building between street alignment and building-line prescribed under section 217. | Two hundred rupees | .. Twenty rupees. |
| Section 218, sub-section (4). | Requisition to remove building erected or added to between street alignment and building-line prescribed under section 217. | Fifty rupees | .. Ten rupees. |
| Section 224 .. | (i) Prohibition of erection of, or addition to, building or wall within street alignment of street projected under section 223. | Two hundred and fifty rupees | Twenty-five rupees. |
| | (ii) Requisition to remove building erected or added to on site between street alignment and building-line of a street projected under section 223. | Fifty rupees | .. Ten rupees. |

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[Ben. Act XV

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|---|-------------------------------|----------------------------------|
| 1 | 2 | 3 | 4 |
| Section 226 | Unlawfully making or laying out a private street. | Two hundred and fifty rupees | Twenty-five rupees. |
| Section 228, sub-section (1). | Requisition on owner of private street or owner or occupier of adjoining land to level, etc., such street. | One hundred rupees | Ten rupees. |
| Section 230, sub-section (2). | Unlawfully interfering with arrangement made for guarding against accident. | Fifty rupees. | |
| Section 231, sub-section (2). | Unlawfully constructing hoardings or fences, etc., or removing the same or failure to construct or to keep the same sufficiently lighted at night. | One hundred rupees | Twenty rupees. |
| Section 232 | Unlawfully depositing movable property on, or making excavation in, or enclosing any public street or failure to make suitable provision for passage of the public, to erect sufficient fences and to keep the same sufficiently lighted. | One hundred rupees | Twenty rupees. |
| Section 234 | Unlawfully using road closed to certain classes of traffic. | One hundred rupees. | |
| Section 235, sub-section (1). | Putting up verandahs, etc., to project over street without permission. | Two hundred and fifty rupees. | |
| Section 235, sub-section (4). | Requisition on owner or occupier of building to comply with condition subject to which permission was given to put up verandahs, etc., projecting over street. | One hundred rupees | Twenty rupees. |
| Section 236, sub-section (1). | Constructing platform upon or over any public street or drain without permission. | Two hundred and fifty rupees | Twenty-five rupees. |
| Section 236, sub-section (2). | Failure to take out a license for platform. | Fifty rupees | Ten rupees. |
| Section 237 | Requisition on owner to remove obstruction to public street or drain caused by fallen building, wall, etc. | Fifty rupees | Ten rupees. |

The Bengal Municipal Act, 1932.

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|---|----------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 238, sub-section (1). | Digging or cutting up a public street without permission. | One hundred rupees. | |
| Section 239 .. | Requisition on owner or occupier to put up and keep in good condition proper troughs and pipes for receiving or carrying off water from building or land. | Fifty rupees .. | Ten rupees. |
| Section 240, sub-section (1), clause (b). | Requisition to remove wall, hoarding, etc., over any house-gully or any public street, drain, etc. | Fifty rupees .. | Ten rupees. |
| Section 241, sub-section (1). | Requisition on owner or occupier of building to remove or alter verandah, platform or other structure or fixture attached to building. | One hundred rupees .. | Ten rupees. |
| Section 242 .. | Requisition on owner of land to trim or cut hedges or trees. | Fifty rupees .. | Ten rupees. |
| Section 243 .. | Requisition on owner of any pool, ditch, tank, etc., which causes damage. | One hundred rupees .. | Ten rupees. |
| Section 244, sub-section (2). | Unlawfully destroying, pulling down, etc., name of public street or number of house. | Twenty rupees. | |
| Section 250 .. | Direction to deposit sewage, etc., in specified places and at specified times. | Ten rupees. | |
| Section 251, sub-section (2). | Placing rubbish or offensive matter on a public street, except at specified times and in proper receptacles. | Ten rupees. | |
| Section 252, sub-section (2), clause (a). | Direction to collect and remove rubbish and offensive matter accumulating on business premises or on premises on which building work is going on. | Ten rupees. | |
| Section 253 .. | Keeping dirt, dung, etc., in or about a house, except in proper receptacle. | Ten rupees. | |

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisions. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|---|----------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 254 (i), (ii) or (iii). | Throwing any rubbish, offen- sive matter, etc., upon any street or in any sewer or drain ¹ [improper] use of drain or discharge of water, steam, etc. | Ten rupees. | |
| Section 255, sub-sec- tion (1). | Failure to dispose of dead bodies of animals. | Twenty-five rupees. | |
| Section 258, sub-sec- tion (1). | Provision for privy and urinal for building. | Fifty rupees. | |
| Section 258, sub- section (3). | Provision for privy, urinal and bathing accommoda- tion for building. | Fifty rupees. | |
| Section 259, sub- section (1). | Requisition on owner of pre- mises to provide or alter privy or urinal or bathing or washing place for or in premises. | Fifty rupees .. | Five rupees. |
| Section 260 .. | Construction, renewal, etc., of house-drain, cess-pool, etc., and appurtenances thereof in contravention of rules. | One hundred rupees .. | Ten rupees. |
| Section 261 .. | Construction or keeping of house-drain, service-privy, urinal or cess-pool within fifty feet of tank, etc. | Fifty rupees .. | Ten rupees. |
| Section 263 .. | Disobeying any lawful order or requisition to repair, alter, remove, shut off, or provide latrine, etc. | Fifty rupees .. | Ten rupees. |
| Section 264, sub- section (1). | Failure to provide house-gully | Fifty rupees .. | Ten rupees. |
| Section 266 .. | Failure or refusal to keep latrine, urinal, etc., in proper condition. | Fifty rupees .. | Ten rupees. |
| Section 272 .. | Unlawfully connecting house- drain with municipal drain. | One hundred rupees .. | Ten rupees. |
| Section 273 .. | Unlawful construction, altera- tion, etc., of drains leading to municipal sewers, etc. | One hundred rupees .. | Ten rupees. |

¹This word was substituted for the words "in proper" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|--|----------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 275 .. | Requisition on owner of premises to make house-drain and provide appliances or fittings or to remove house-drain, etc. | Fifty rupees | Five rupees. |
| Section 276 .. | Requisition on owner of premises to make house-drain communicating with closed cess-pool. | Fifty rupees | Five rupees. |
| Section 290 .. | Requisition on owner or occupier to lay down separate service-pipes for separate holdings. | One hundred rupees | Ten rupees. |
| Section 298, sub-section (1). | Fraud in respect of meter .. | One hundred rupees. | |
| Section 299 .. | Injuring meter or fittings thereof. | One hundred rupees. | |
| Section 301, sub-section (3). | Improper use of water supplied for domestic purposes. | Ten rupees | Five rupees. |
| Section 303, sub-section (4), | Requisition to alter or add to work, pipe or fitting unsuitable for the purpose. | Fifty rupees | Five rupees. |
| Section 305 .. | (i) Taking water out of municipal limits, without authorization. | One hundred rupees. | |
| | (ii) Negligently allowing water to be wasted. | Twenty rupees. | |
| | (iii) Unlawfully drawing off or diverting water from water-works. | Five hundred rupees | Fifty rupees. |
| Section 307 .. | Commencing work for supply of water to any premises without sending estimate and specification. | One hundred rupees | Ten rupees. |
| Section 315, sub-section (2). | Prohibition of erection of building without permission or so as to deprive another building of proper means of access. | Two hundred rupees | Fifty rupees. |
| Section 320 .. | Sending written notice after completion of erection of a new building. | Fifty rupees. | |

The Bengal Municipal Act, 1932.

[*Ben. Act XV.*

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|--|---|--|
| 1 | 2 | 3 | 4 |
| Section 321, sub-section (2). | Requisition on owner to make specified alterations. | Two hundred and fifty rupees in the case of a masonry building and twenty-five rupees in the case of a hut. | Twenty-five rupees in the case of a masonry building and five rupees in the case of a hut. |
| Section 323, sub-section (1). | Constructing the roofs or external wall of a house with inflammable materials without permission. | Twenty-five rupees .. | Five rupees. |
| Section 323, sub-section (2). | Requisition on owner of a building to remove roof or external wall of inflammable materials. | Fifty rupees .. | Five rupees. |
| Section 333, sub-section (1). | Requisition to discontinue the erection of a new building or other unlawful work. | Two hundred rupees .. | Twenty-five rupees. |
| Section 337 .. | Requisition on owners or occupiers to carry out in <i>bustee</i> hut-improvements specified in the schedule annexed to the report. | Two hundred rupees .. | Twenty-five rupees. |
| Section 341, sub-section (2). | Failure to keep open private street in <i>bustee</i> for scavenging or other purposes and for use of tenants. | Fifty rupees | Ten rupees. |
| Section 342 .. | Failure to keep open bathing and privy accommodation in <i>bustee</i> for use of tenants. | Fifty rupees | Ten rupees. |
| Section 343, sub-section (2). | Requisition on owner to maintain in proper order street, drains, etc., in <i>bustee</i> according to standard plan. | Two hundred rupees .. | Twenty rupees. |
| Section 344, sub-section (6). | Requisition on owner to carry out improvements before re-erecting huts. | One hundred rupees .. | Ten rupees. |
| Section 345, sub-section (4). | Erection of hut or portion of hut within alignment prescribed for private streets in <i>bustee</i> or other area. | Fifty rupees. | |
| Section 345, sub-section (5). | Failure to keep open private street in <i>bustee</i> for scavenging or other purposes and for use of tenants. | Fifty rupees | Ten rupees. |
| Section 346, sub-section (1). | Requisition on owners or occupiers to remove huts. | Fifty rupees | Ten rupees. |

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses, or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|--|----------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 347 .. | Requisition on person erecting masonry building in <i>bustee</i> to leave space of ¹ [fifteen] feet from centre line of street. | One hundred rupees .. | Twenty rupees. |
| Section 348 .. | Direction to set apart tanks, wells, etc., for drinking, culinary, bathing and washing purposes. | Fifty rupees .. | Five rupees. |
| Section 349 .. | Requisition to cleanse or protect tank, well, etc., used for drinking or culinary purposes. | Fifty rupees .. | Five rupees. |
| Section 350 .. | Prohibition of use of polluted water for drinking or culinary purposes. | Fifty rupees. | |
| Section 353 .. | Requisition to take measures to prevent the use of polluted water. | Fifty rupees .. | Five rupees. |
| Section 356, sub-section (1). | Requisition to cleanse, fill up or de-water well, pool, ditch, tank, pond or marshy ground or to drain off or remove waste or stagnant water. | One hundred rupees .. | Ten rupees. |
| Section 357, sub-section (1). | Making excavation or digging cess-pool, tank, pond, well or pit. | One hundred rupees. | |
| Section 357, sub-section (2). | Requisition to fill up excavation, cess-pool, tank, etc., unlawfully made. | Fifty rupees .. | Five rupees. |
| Section 359, sub-section (1). | Requisition to secure or protect dangerous well, tank or excavation. | One hundred rupees .. | Ten rupees. |
| Section 360 .. | Prohibition of cultivation of crops, use of manure or method of irrigation injurious to health and the growth of water-hyacinth and noxious weeds. | Fifty rupees .. | Five rupees. |
| Section 362 .. | Requisition on owner or occupier to lime-wash or otherwise cleanse building. | Twenty-five rupees .. | Five rupees. |

¹This word was substituted for the word "twenty" by s. 10 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|---|---|---|
| 1 | 2 | 3 | 4 |
| Section 363 | Requisition on owner or occupier to clear noxious vegetation and to improve bad drainage. | One hundred rupees .. | Ten rupees. |
| Section 364, sub-section (1). | Requisition on owner or occupier to take down, repair or secure wall or building or fixture in a ruinous state, etc. | Two hundred and fifty rupees | One hundred rupees. |
| Section 364, sub-section (2). | Requisition on inmate to vacate building in ruinous state, etc. | One hundred rupees .. | Fifty rupees. |
| Section 365, sub-section (1). | Requisition on owners or occupiers to execute works or take measures with respect to buildings or block of buildings in order to prevent risk of disease. | Five hundred rupees in the case of a masonry building or block of masonry buildings and one hundred rupees in the case of a hut or block of huts. | One hundred rupees in the case of a masonry building or block of masonry buildings and twenty rupees in the case of a hut or block of huts. |
| Section 366, sub-section (3). | Using building declared unfit for human habitation. | Two hundred and fifty rupees | Fifty rupees. |
| Section 367, sub-section (2). | Requisition on owner or occupier to demolish or execute work on building declared unfit for human habitation. | Two hundred and fifty rupees | Fifty rupees. |
| Section 368, sub-section (1). | Requisition on owner to abate overcrowding in building or room. | Twenty-five rupees .. | Five rupees. |
| Section 368, sub-section (4). | Requisition on inmate to vacate overcrowded building or room. | Twenty-five rupees .. | Five rupees. |
| Section 370, sub-section (1). | Using any place for any of the purposes specified in section 370 without license. | One hundred rupees .. | Ten rupees. |
| Section 370, sub-section (3). | Breach of condition of license under section 370. | One hundred rupees | Ten rupees. |
| Section 372, sub-section (1). | Keeping horses and cattle for trade or business without license. | Fifty rupees | Five rupees. |
| Section 372, sub-section (2). | Breach of condition of license issued under section 372. | Fifty rupees | Five rupees. |
| Section 373, sub-section (1). | Keeping horses and cattle except in public stables. | Fifty rupees | Five rupees. |

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|--|----------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 373, sub-section (4). | Breach of condition of license issued under section 373. | Fifty rupees. | Five rupees. |
| Section 374, sub-section (1). | Keeping pigs, sheep, etc., without license. | Fifty rupees | Five rupees. |
| Section 374, sub-section (2). | Breach of condition of license issued under section 374. | Fifty rupees | Five rupees. |
| Section 377 .. | Information of existence of infectious disease in any building. | Fifty rupees. | |
| Section 378, sub-section (3). | Removal to hospital of patient suffering from infectious or contagious disease. | One hundred rupees. | |
| Section 379, sub-section (1). | Requisition on occupier to va- cate building or part thereof to admit of disinfection. | Fifty rupees | Ten rupees. |
| Section 381 .. | Letting infected building .. | Five hundred rupees. | |
| Section 382, sub-section (2), clause (b). | Direction to disinfect cloth- ing, bedding or other articles likely to retain infection. | Fifty rupees | Five rupees. |
| Section 383 .. | Washing infected articles at unauthorised places. | Fifty rupees. | |
| Section 384 .. | Infected person making, sell- ing or touching any article of food or medicine or drug or taking part in business of washing clothes or sell- ing clothes. | Fifty rupees. | |
| Section 385, sub-section (1). | Giving, lending, etc., infected article. | Fifty rupees. | |
| Section 386, sub-section (1). | Infected person exposing him- self in a public place or allow- ing himself to be carried in public conveyance, etc., and person in charge of an in- fected person, dead body or infected article permitting the same to be so exposed or carried, as the case may be. | Fifty rupees. | |
| Section 387, sub-section (1). | Failure to take public convey- ance to appointed place for disinfection. | One hundred rupees. | |
| Section 387, sub-section (4). | Using infected public convey- ance. | One hundred rupees. | |

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|---|------------------------------|----------------------------------|
| 1 | 2 | 3 | 4 |
| Section 388, sub-section (2). | Carrying infected person, dead bodies, etc., in other than special conveyance without permission. | One hundred rupees. | |
| Section 390, sub-section (1). | Direction to close or prohibition against attending market, <i>sarai</i> , etc., to prevent spread of infection. | Two hundred and fifty rupees | Twenty-five rupees. |
| Section 391, sub-section (1). | Direction to close school or to exclude scholars from attendance to prevent spread of infection. | Two hundred and fifty rupees | Twenty-five rupees. |
| Section 398, sub-section (1). | Direction to regulate operations in case of fire. | One hundred rupees. | |
| Section 400 .. | Prohibition of stacking or collecting hay, wood, etc., within certain limits. | One hundred rupees .. | Ten rupees. |
| Section 404, sub-section (1). | Selling in municipal market without permission. | Twenty-five rupees. | |
| Section 405, sub-section (1). | (i) Establishing new private market without sanction. | One thousand rupees. | |
| | (ii) Keeping open any private market or permitting any place to be used as a private market. | Two hundred rupees .. | Twenty-five rupees. |
| Section 406 .. | Using as market a place which Magistrate has directed to be closed. | One hundred rupees .. | Twenty rupees. |
| Section 408 .. | Slaughtering animal at place other than a municipal or licensed slaughter-house. | Fifty rupees. | |
| Section 409 .. | Requisition to pave, drain, etc., or otherwise improve private market. | Fifty rupees .. | Ten rupees. |
| Section 410, sub-sections (1) and (2). | Requisition on owner or occupier of private market to lay out, alter, etc., approaches, roads, etc., and to provide conveniences for, and maintain, the same. | Fifty rupees .. | Ten rupees. |
| Section 411, sub-section (2). | Requisition on tenant or agent to remove himself from market or slaughter-house. | Fifty rupees .. | Ten rupees. |

[1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|--|--|----------------------------|----------------------------------|
| 1 | 2 | 3 | 4 |
| Section 414A .. | Holding a fair or <i>mela</i> without or otherwise than in conformity with the terms of a license. | Two hundred rupees .. | Twenty-five rupees. |
| Section 414B .. | Prohibition of prostitution .. | Five hundred rupees. | |
| Section 415, sub-section (1). | Using false or incorrect weight or measure or instrument for weighing. | Fifty rupees .. | Five rupees. |
| Section 415, sub-section (3). | Failure to produce for inspection instruments for weighing, weights and measures. | Fifty rupees. | |
| Section 418, sub-section (1). | Carrying on trade of butcher or selling animals, meat or fish outside market without license. | One hundred rupees .. | Ten rupees. |
| Section 420, sub-section (1). | Carrying on trade of dairyman, milkman, baker, etc., without license. | One hundred rupees .. | Ten rupees. |

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In the table appended to section 500, omit the entries relating to sections 423 and 424.

Section 42 (Omitted by West Bengal Act XXVIII of 1951, section 19)

[No. 48, dated the 1st April, 1952.]

| | | | |
|-------------------------------|---|-----------------------|----------------|
| Section 423 .. | Selling drugs recognised in British Pharmacopœia in any place without license. | One hundred rupees .. | Twenty rupees. |
| Section 424, sub-section (1). | Compounding, mixing, etc., drug in a licensed shop or place without holding a certificate. | Fifty rupees. | |
| Section 424, sub-section (2). | Employing unauthorized person to compound, etc., drugs in licensed shop or place. | Two hundred rupees. | |
| Section 428, sub-section (2). | Removing, interfering or tampering with living thing, food, drug, etc., seized and left in custody. | Two hundred rupees. | |

¹These entries were inserted by s. 42(iii) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|--|-------------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| Section 435 .. | Registration of place used as a burial or burning ground. | One hundred rupees. | . |
| Section 436 .. | Formation or using place as burial or burning ground without permission. | Five hundred rupees. | |
| Section 438, sub-section (1). | Burning or burying corpse except in a place provided for the purpose without permission. | One hundred rupees. | |
| Section 438, sub-section (2). | Exhuming corpse in certain cases without permission. | Five hundred rupees. | |
| Section 439, sub-section (1). | Direction to close burial or burning ground injurious to health or offensive to neighbourhood. | Five hundred rupees .. | Fifty rupees. |
| Section 441, sub-section (2). | Disposal of dead bodies of persons dying from infectious disease. | One hundred rupees. | |
| Section 443, sub-section (1). | Selling fuel or other article for cremation without license. | Fifty rupees. | |
| Section 443, sub-section (2). | Selling articles for cremation at a higher rate than the rate fixed. | Fifty rupees. | |
| Section 447 .. | Notice of birth or death by medical officer in charge of hospital. | Fifty rupees. | |
| Section 453, sub-section (2). | Direction for removal of nuisance. | Five hundred rupees | Fifty rupees. |
| Section 461 .. | Failure to surrender license | One hundred rupees .. | Ten rupees. |
| Section 467 .. | Production of license for inspection. | Fifty rupees .. | Ten rupees. |
| Section 474, sub-section (5). | Construction of private road without permission, etc. | Five hundred rupees .. | One hundred rupees. |
| Section 475 .. | Requisition to re-construct, etc., a private road or bridge. | Five hundred rupees .. | One hundred rupees. |
| Section 476 .. | Requisition to provide and maintain or to enlarge waterway. | Two hundred and fifty rupees | Fifty rupees. |
| Section 477 .. | Construction, etc., of private road or bridge. | Two hundred and fifty rupees. | |

of 1932.]

(Chapter XXIV.—Penalties.—Sec. 500.)

| Sections, sub-sections, clauses or provisos. | Subject. | Fine which may be imposed. | Daily fine which may be imposed. |
|---|--|---|---|
| 1 | 2 | 3 | 4 |
| Section 478 .. | Requisition to close a private road. | Two hundred and fifty rupees | Fifty rupees. |
| Section 479 .. | Requisition on owner to remove obstruction to public road or drain caused by fallen building, etc. | Fifty rupees .. | Ten rupees. |
| Section 480, clause (b) | Requisition to remove debris falling upon or into a private road or drain. | Fifty rupees .. | Ten rupees. |
| Section 482, sub-section (4). | Construction to private drain without permission, etc. | Two hundred and fifty rupees | Fifty rupees. |
| Section 483, sub-section (1). | Requisition to re-construct, etc., private drain. | Two hundred and fifty rupees | Fifty rupees. |
| Section 483, sub-section (2). | Requisition to provide, repair, etc., roof gutters, etc. | One hundred rupees .. | Ten rupees. |
| Section 484 .. | Requisition to provide a drain. | Two hundred and fifty rupees | Fifty rupees. |
| Section 486 .. | Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immovable property. | Five hundred rupees .. | One hundred rupees. |
| Section 487 .. | Requisition to take down or secure buildings, etc., where hillside or bank threatens their safety. | Five hundred rupees .. | One hundred rupees. |
| Section 488 .. | Requisition to construct revetment, etc. | Five hundred rupees .. | One hundred rupees. |
| Section 492 .. | Revetment, turfing and sloping. | Two hundred and fifty rupees | Fifty rupees. |
| Section 493, sub-section (1). | Prohibition of occupation of unsafe building. | Two hundred and fifty rupees in the case of a masonry or framed building and fifty rupees in the case of a hut. | Fifty rupees in the case of a masonry or framed building and ten rupees in the case of a hut. |
| Section 493, sub-section (2). | Prohibition of occupation of insanitary building. | Fifty rupees .. | Ten rupees. |
| Section 513 .. | Obstructing Commissioners, Chairman, Vice-Chairman, etc., in making any entry, search, etc., or carrying on work under this Act. | Two hundred rupees for a first offence and five hundred rupees for a subsequent offence. | |

(Chapter XXIV.—Penalties.—Secs. 501—504.)

Fine for
unlawfully
commencing,
carrying on or
completing
work.

501. If the erection of any new building—

- (a) is commenced without obtaining the written permission of the Commissioners, or
- (b) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or
- (c) is carried on or completed in breach of any provision contained in this Act or in any rules or by-laws made thereunder, or of any direction or requisition lawfully given or made under this Act or such rules or by-laws, or

if any alteration of, or addition to, any building or any other work made or done for any purpose in, to or upon any building is commenced, carried on or completed in breach of section 326,

the owner of the building shall be liable to fine, which may extend in the case of a masonry building to five hundred rupees and in the case of a hut to fifty rupees, and to further fine, which may extend in the case of a masonry building to one hundred rupees and in the case of a hut to ten rupees for each day during which the offence is continued after the first day.

Penalty for
obstructing
contractor or
removing mark.

502. Any person who, in contravention of section 541, obstructs or molests any person with whom the Commissioners have entered into a contract, or, in contravention of section 542, removes any mark, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

Power to
impose
penalties for
breach of
rules or by-laws.

503. In making any rule or by-law the Commissioners may, with the sanction of the ¹[Provincial Government], or in the case of any rule, model rule or by-law the ¹[Provincial Government] may direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

Penalty on
officers, etc.,
taking
unauthorized
fees.

504. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show

Act XLV
of 1860.

¹See foot-note 3 on p. 85, ante.

of 1932.]

(Chapter XXV.—Procedure.—Secs. 505, 506.)

in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Commissioners or with any public servant or ¹[with any Government] in the discharge of his official duties, he shall be punished with imprisonment, for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both.

CHAPTER XXV.

Procedure.

Rules and by-laws.

505. (1) The power of the ²[Provincial Government] to make rules under this Act is subject to the condition of the rules being made after previous publication.

Previous publication of rules made by Government.

(2) Any rule made by the ²[Provincial Government] may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the ²[Provincial Government] may direct.

506. (1) Rules and by-laws made by the Commissioners under this Act shall not take effect unless and until they have been submitted to, and confirmed by the ²[Provincial Government].

Confirmation and publication of rules and by-laws made by the Commissioners.

(2) Such rules and by-laws shall not be confirmed—

- (i) unless one month at least before the making of the application notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the municipality to which such rules or by-laws relate, or if there be no such newspapers, then in such manner as the Commissioners may direct, and
- (ii) unless for one month at least before such application a copy of the proposed rules or by-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the municipality to which such rules or by-laws relate, without fee.

(3) The Commissioners shall, on the application of any inhabitant of the municipality, furnish him with a copy of

¹These words were substituted for the words "with the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 85, *ante*.

(Chapter XXV.—Procedure.—Secs. 507—510.)

such proposed rules or by-laws, on payment of four annas for every hundred words contained in the copy.

(4) The ¹[Provincial Government] may rescind any rule or by-law which it has confirmed, and thereupon the rule or by-law shall cease to have effect.

Publication of rules, by-laws, orders and notices.

Publication of
rules, by-laws,
orders and
notices.

* 507. Every rule, by-law, order, public notice or other document directed to be published under this Act shall be written in, or translated into, Bengali, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct;

and a public proclamation shall be made throughout the municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

Signature and service of notices, etc.

Signature of
notices, etc.,
may be
stamped.

508. (1) Every license, written permission, notice, bill, summons or other document which is required by this Act or by any rule or by-law made thereunder to bear the signature of the Chairman, Vice-Chairman or any other municipal officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Chairman, Vice-Chairman or such municipal officer stamped thereupon.

(2) Nothing in sub-section (1) shall be deemed to apply to a cheque drawn upon the Municipal Fund.

Notices, etc., by
whom to be
served or
issued.

509. All notices, bills, summonses and other documents required by this Act or by any rule or by-law made thereunder to be served upon, or issued to, any person, shall be so served or issued by municipal officers or servants or by other persons authorized by the Commissioners at a meeting in this behalf.

Service
how to be
effected on
owner or
occupier of
premises.

510. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person as owner or occupier of any land or building, it shall not be necessary to name the owner or occupier in the document and the service or issue thereof shall be effected—

(a) by giving or tendering such document to the owner or occupier :

Page 316—

Put an asterisk against section 507 and insert the following footnote after footnote 1, namely:—

*In the application of the Act to the district of Darjeeling, in section 507 after the word "Bengali" insert the words "and such other languages as the Provincial Government may by notification prescribe."

(Inserted by paragraph XI of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

Vo. 38, dated the 6th December, 1945.]

of 1932.]

(Chapter XXV.—Procedure.—Secs. 511, 512.)

Commissioners practicable to serve the document on every one of them the Commissioners may serve the document on any one or more of them as they may think fit ; or

- (b) if the owner or occupier is not found, by giving or tendering such document or by sending it by post to any adult male member of the family, or to a servant in the employ, of the owner or occupier or of any one of the owners or occupiers ; and
- (c) both in the cases mentioned in clauses (a) and (b) by affixing such notice, bill, summons, or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

511. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person otherwise than as owner or occupier of any land or building, such service or issue shall be effected—

Service how to be effected otherwise than on owner or occupier of premises.

- (a) by giving or tendering such document to such person ; or
- (b) if such person is not found, by leaving such document at his last known place of abode or business in the municipality or by giving or tendering the same or by sending it by post to any adult male member of his family or adult male servant in his employ ; or
- (c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioners, by forwarding such document to him by post in a cover bearing the said address ; or
- (d) if none of the means referred to in clauses (a), (b) or (c) be available, by affixing such notice, bill, summons or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

Powers of entry and inspection.

512. The Chairman, Vice-Chairman, Executive Officer, Health Officer, Engineer or Sanitary Inspector, or any other person authorized by the Commissioners in this behalf, may enter into or on any building or land with or without assistants or workmen, in order to make any inquiry, inspection, test, examination, survey, measurement or valuation or for the purpose of lawfully placing or removing pipes or

Power of entry to inspect, survey or execute work.

(Chapter XXV.—Procedure.—Secs. 513, 514.)

meters, or to execute any other work which is authorized by the provisions of this Act or of any rule, by-law or order made thereunder, or which it is necessary for any of the purposes of this Act or in pursuance of any of the said provisions, to make or execute :

Provided that—

- (a) except when it is in this Act or in any rule or by-law made thereunder otherwise expressly provided, no such entry shall be made between sunset and sunrise ;
- (b) except when it is otherwise expressly provided as aforesaid, no dwelling-house, and no part of a public building used as a dwelling-place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least twelve hours' previous notice of the intention to make such entry ;
- (c) reasonable notice shall be given in every case even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to women to remove to some part of the premises where their privacy may be preserved ;
- (d) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

Prohibition of obstructing entry.

513. No person shall, in any way, obstruct the Commissioners, Chairman, Vice-Chairman, Executive Officer, Health Officer, Sanitary Inspector or any municipal officer or servant, or any other person authorized by the Commissioners at a meeting or otherwise, in making any entry, inspection or search under this Act, or any person accompanying them at their request or acting under their orders for the purpose of such entry or acting under their orders in carrying out any work, under the provisions of this Act, or under any rule or by-law made thereunder for the carrying out of such work.

Enforcement of requisitions.

Procedure when owners or occupiers required to execute works by Commissioners.

514. (1) Whenever it is provided in this Act or in any rule or by-law made thereunder that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land or building, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served on every owner or occupier

of 1932.]

(Chapter XXV.—Procedure.—Secs. 515, 516.)

who is required to execute such work or to do such thing : but, if there is any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land or building, to execute such work or to do such thing within a specified time ; and in such notification it shall not be necessary to name the owners and occupiers. If no time is specified in this Act or in any rule or by-law made thereunder for the execution of such work or the doing of such thing the notice shall prescribe a reasonable period for carrying the requisition into effect, and shall be served as provided in this sub-section.

(2) Every requisition provided in sub-section (1), other than a requisition under section 240 or section 241, or under the provisions of Chapter XXI shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in section 515, the Commissioners will enter upon the land or building and cause the required work to be executed, or the required thing to be done ; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

515. A person who is required by a requisition as provided in section 514, other than a requisition under section 240 or section 241, or under the provisions of Chapter XXI to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification containing the requisition ; or if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Objection by persons required to execute any work.

Except as provided in section 516, such objection shall be heard and disposed of by the Chairman, Vice-Chairman or Executive Officer.

516. If the objection alleges that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting ; unless the Chairman, Vice-Chairman or Executive Officer certifies that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman, Vice-Chairman or Executive Officer :

Procedure if person objecting alleges that work will cost more than three hundred rupees.

Provided that in any case in which the Chairman, Vice-Chairman or Executive Officer has certified his opinion as

(Chapter XXV.—Procedure.—Secs. 517—519.)

aforesaid, and the objection has in consequence thereof been heard and disposed of by the Chairman, Vice-Chairman or Executive Officer the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation, in respect of executing the work or doing the thing required and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

Orders after hearing

517. The Chairman, Vice-Chairman, Executive Officer or the Commissioners at a meeting, as the case may be, shall after hearing the objection and making any inquiry which may be deemed necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

Order to be explained orally.

518. If the person making such objection is present at the office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section 510 or section 511, as the case may be, on the person making the objection: and such explanation of, or service of, the notice of the said order shall be deemed to be a requisition duly made under this Act to execute the work or do the thing required.

Power of Commissioners on failure of persons to execute work.

519. (1) If the person required to execute the work or to do the thing fails within the time specified in any requisition provided in sub-section (1) of section 514 other than a requisition under section 240 or section 241, or a requisition under Chapter XXI to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in this behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land or building and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid to the Commissioners by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

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(Chapter XXV.—Procedure.—Secs. 520—524.)

(2) The Commissioners may take any measure, execute any work or cause anything to be done under this section or under the provisions of Chapter XXI, whether or not the person who has failed to comply with the requisition is liable to punishment, or has been prosecuted or sentenced to any punishment, under this Act or under any rule or by-laws made thereunder for such failure.

520. Whenever any expenses incurred by the Commissioners are to be paid by the owners or by the occupiers of any land or building as provided in section 519, the Commissioners may, if there be more than one owner or more than one occupier, as the case may be, apportion the said expenses among such of the owners or among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

Apportionment of expenses among owners.

521. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land or building as provided in section 519, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Apportionment among owners and occupiers.

522. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction.

Recovery by occupier of cost of works executed at his expense.

523. Whenever any works referred to in clause (c) of subsection (1) of section 259 are executed by the Commissioners, the Commissioners at a meeting may order that the costs thereof shall be recovered by instalments from the person liable to pay the same, or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the cost or any portion thereof to be paid out of the Municipal Fund.

Recovery of costs by instalments or its remission in cases of poverty.

Recovery of costs and expenses.

524. All costs, expenses, rents, tolls, fees or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 155 to 162 (both inclusive).

Recovery of moneys due to the Commissioners.

(Chapter XXV.—Procedure.—Secs. 525—528.)

Power to sell
unclaimed
holdings for
money due.

525. (1) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

(2) After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

(3) Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

Sale of
materials.

526. (1) The materials of anything which shall have been pulled down or removed by the Commissioners under the provisions of sections 237, 364, 366, 454, or sub-section (2) of section 514, may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend to the payment of the expenses incurred.

(2) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

Power to enter
upon possession
of houses
repaired.

527. If the Commissioners have under the provisions of this Act caused any repairs to be made to any building or other structure, and if such building or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

Damage to
municipal
property how
made good.

528. If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of the Commissioners shall have been committed by such person he shall be liable to make good such damage as well as to pay such penalty, and the amount of damage shall, in case of dispute be determined by the Magistrate by whom the person incurring such penalty is convicted, and on non-payment of such damage on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

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(Chapter XXV.—Procedure.—Secs. 529—530.)

529. (1) Whenever any person, by reason of his—

Relief to agents
and trustees.

- (a) receiving the rent of immovable property as a receiver, agent or trustee, or
- (b) being as a receiver, agent or trustee the person who would receive the rent if the property were let to a tenant,

would, under this Act or under any rule or by-law made thereunder, be bound to discharge any obligation imposed thereby on the owner of the property and for the discharge of which money is required, and such person has not in his hands funds belonging or payable to the owner sufficient for the purpose, he shall, within a reasonable time from the service upon him of any notice from the Commissioners in this behalf requiring him to discharge the said obligation, be bound to apply to a court of competent jurisdiction for leave to raise the necessary funds or for such other directions in relation thereto as the circumstances of the case may require.

(2) Any receiver, agent or trustee who fails to apply to the court under sub-section (1) shall be deemed to be personally liable to discharge the said obligation.

Appeals.

529A. (1) Any person aggrieved by any entry in or omission from the final electoral roll published under section 21 may, within fifteen days from the date of publication of such roll, appeal to the District Magistrate and if the District Magistrate on such appeal directs any modification or addition to be made in such roll, the roll shall be amended accordingly and the amendment so made shall be published in the same manner as the final roll.

Appeals regard-
ing electoral
roll.

(2) No entry in or omission from a final electoral roll published under section 21 shall be liable to be called in question otherwise than by such appeal.

530. (1) Any person aggrieved by any prohibition, notice or order, made by the Commissioners under the powers conferred upon them by sub-section (3) of section 140, section 176, sub-section (2) of section 218, sub-section (1) of section 219, sub-section (1) of section 228, clause (b) of sub-section (1) of section 240, sub-section (1) of section 241, clause (b) of sub-section (2) of section 252, clauses (ii) and (iii) of section 254, sub-section (1) of section 258, section 259, section 261,

Appeals from
certain orders of
the Commis-
sioners.

¹Section 529A was inserted by s. 43 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Chapter XXV.—Procedure.—Secs. 531—533.)

section 263, sub-section (1) of section 264, section 309, sub-section (2) of section 341, section 343, section 348, section 349, section 356, section 357, sub-section (1) of section 364, section 368, section 372, sub-section (2) of section 410, section 411, section 418, section 420, section 423, section 520 and section 521 may, within thirty days, from the date of such prohibition, notice or order, appeal to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal:

Provided that the prohibition, notice or order shall not be modified or set aside or confirmed until the appellant and the Commissioners have had reasonable opportunity of being heard.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) Except on appeals from decisions or orders under sub-section (3) of section 140, section 372, section 418, section 420, section 423, section 520 and section 521, the order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final.

Appeals from orders refusing license under this Act.

531. Any person aggrieved by an order refusing a license required under this Act may, notwithstanding anything contained elsewhere in this Act, within thirty days, appeal to the ¹[Provincial Government] whose decision shall be final and shall not be questioned in any court.

Prosecutions.

Power of Commissioners to direct prosecution for public nuisance, etc.

532. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act or rules or by-laws made thereunder and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund.

Sanction and limitation for prosecution under this Act.

533. No prosecution for an offence under this Act or any rule or by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution

¹See foot-note 3 on p. 85, ante.

[of 1932.]

(Chapter XXV.—Procedure.—Secs. 534, 535.)

may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman :

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

534. (1) When any person, in the presence of a police-officer commits, or is accused of committing, any offence, under this Act or any rule or by-law made in pursuance thereof and refuses, on demand of a police-officer, to give his name and residence or gives a name or residence, which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained ; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

Police-officer to arrest persons refusing to give name and residence.

(2) Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than twenty-five rupees *per mensem*, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.

Suits.

535. (1) No suit or other legal proceeding shall be brought against the Commissioners of any municipality or any of their agents, officers or servants, or any person acting under their direction, for any act purporting to be done under this Act or any rule or by-law made thereunder until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners and also (if the suit or proceeding is intended to be brought against any officer or servant of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit or proceeding is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit or proceeding ;

Notice of suits against Commissioners.

and unless such notice be proved, the court shall find for the defendant.

(2) Every such suit or proceeding shall be commenced within six months next after the accrual of the cause of action, and not afterwards.

(Chapter XXV.—Procedure.—Chapter XXVI.—Savings.—
Secs. 536—538.)

(3) When the suit or proceeding is for damages, tender of amends, if any, made before the suit or proceeding is brought may, in lieu of or in addition to any other plea, be pleaded. If the suit or proceeding was commenced after the tender or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, the defendant shall be entitled to full costs of the suit or proceeding after the tender or payment.

Contest of
liability in
civil courts.

536. (1) Any owner or occupier of land or of a building may contest his liability to pay any expenses or fees under sections 519 to 521 or may contest the amount which he has been called upon to pay in a civil court of competent jurisdiction:

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 524.

(2) Where any damages or compensation other than compensation payable under section 98 are by this Act directed to be paid by the Commissioners the amount, and if necessary, the apportionment of the same, shall, in case of dispute, except as otherwise expressly provided in this Act, be ascertained and determined by a civil court of competent jurisdiction.

CHAPTER XXVI.

Savings.

Savings.

537. No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, rate, toll, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

Distress or sale
not unlawful
for want of
form.

538. No distress or sale made under this Act shall be deemed unlawful nor shall any person making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto, nor shall

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(Chapter XXVI.—Savings.—Secs. 539—543.)

such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them in any court of competent jurisdiction, subject to the provisions of section 535.

539. Whenever any right is conferred or duty imposed by or under this Act, or by any rule or by-law made thereunder on the owner or occupier of any premises, and in consequence of there being gradations of owners or occupiers, doubt arises as to who is the owner or occupier entitled to exercise such right or bound to perform such duty, the Commissioners may, after due inquiry, determine from time to time which of such owners or occupiers shall be deemed to be so entitled or bound.

Who to be deemed owner or occupier where there are gradations of owners or occupiers.

540. Every Commissioner, every municipal officer and servant, every person employed for the collection of any municipal rate, tax, or fee and every person authorized by the Chairman or the Commissioners at a meeting or otherwise to do any act under this Act or any rule or by-law made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code; and in the definition of legal remuneration in section 161 of that Code, the word Government shall, for the purposes of this section, be deemed to include a body of Municipal Commissioners.

Commissioners, municipal officers, etc., to be deemed public servants.

Act XLV of 1860.

541. No person shall obstruct or molest any person (not being a person referred to in section 540) with whom the Commissioners have entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue, or in consequence of this Act or any rule or by-law made thereunder.

Prohibition of obstruction of municipal contractors.

542. No person shall without the permission of the Commissioners remove any boundary mark set up under the provisions of this Act or any mark set up for the purpose of indicating any level, measurement or direction necessary to the execution of works authorized by this Act or by any rule or by-law made thereunder.

Prohibition of removal of mark.

Ben. Act VI of 1870.

543. Notwithstanding anything contained in section 3 of the Village Chaukidari Act, 1870, the provisions of Part II of the said Act, relating to *chaukidari chakran* lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the *panchayat* of a village or any member thereof is

Chaukidari chakran lands.

(Chapter XXVII.—*Delegation of powers and control.*—
Secs. 544, 545.)

required to discharge under the provisions of the said Part shall be discharged, and all powers which the *panchayat* of a village or any member thereof is authorized to exercise under the said Part shall be exercised by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal Fund; and shall be available for the purposes of such fund.

CHAPTER XXVII.

Delegation of powers and control.

Delegation.

Delegation of
powers by the
Provincial
Government.

544. The ¹[Provincial Government] may, with regard to municipalities generally or to any municipality or class of municipalities and subject to such conditions or restrictions as it may deem fit to impose, by notification delegate to the Commissioner of the Division any of the powers vested in the ¹[Provincial Government] by this Act, except any power to make rules and the powers conferred by sections 6, 8, 13, 15, 17, 67, 135, second proviso, 285, 548, 549, 550, 552 and 553.

Control.

Supervision by
Commissioner,
District
Magistrate, etc.

545. The Commissioner of the Division or the District Magistrate or the Magistrate in charge of a subdivision when he is not a member of the municipality may, within, the limits of his division or district or subdivision, as the case may be,—

- (a) inspect, or cause to be inspected, any immovable property used or occupied by the Commissioners or any work in progress under the direction of the Commissioners or of a joint committee;
- (b) by order in writing call for and inspect a book or document in the possession or under the control of the Commissioners or of such committee;
- (c) by order in writing require ²[the Commissioners or such committee] to furnish such statements, accounts, reports or copies of documents, relating to the proceedings or duties of the Commissioners or the committee, as he thinks fit to call for; and

¹See foot-note 3 on p. 85, *ante*.

²These words were substituted for the words "the Commissioners of such committee" by s. 11 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

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*(Chapter XXVII.—Delegation of powers and control.—
Secs. 546—548.)*

(d) record in writing for the consideration of the Commissioners or of such committee, any observations he thinks proper in regard to the proceedings or duties of the Commissioners or the committee.

546. A work, or institution, constructed or maintained, in whole or part, at the expense of the Commissioners and all registers, books, accounts or other documents relating thereto shall, at all times, be open to inspection by such officers as the ¹[Provincial Government] may appoint in this behalf.

Inspection of municipal works and institutions by Government officers.

547. The Chief Engineer, Public Health Department, the Director of Public Health or Deputy or Assistant Director of Public Health, the Civil Surgeon of the district, the Executive Engineer, the Inspector of Schools, and any other officer specially authorized by the ¹[Provincial Government] in this behalf shall be entitled to attend a meeting of the Commissioners to address the Commissioners on any matter affecting their respective departments.

Right of certain officers to attend and speak at meetings.

548. (1) The ¹[Provincial Government] may by order in writing annul any proceeding which it considers not to be in conformity with law and with the rules in force thereunder and may do all things necessary to secure such conformity, or may suspend any resolution which it considers likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

Power to suspend action under Act.

(2) The Commissioner of the Division or the District Magistrate may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act or any rule or by-law made thereunder, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

(3) When the Commissioner of the Division or the District Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the ¹[Provincial Government], who may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

¹See foot-note 3 on p. 85, ante.

(Chapter XXVII.—Delegation of powers and control.—

Secs. 549, 550.)

**Powers of
Provincial
Government in
case of default.**

549. (1) If at any time it appears to the ¹[Provincial Government], that the Commissioners have made default in performing any duty imposed on them by or under this or any other Act, the ¹[Provincial Government] may, by an order in writing, fix a time for the performance of that duty.

(2) If such duty is not performed within the period so fixed, the ¹[Provincial Government] may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the Municipal Fund.

**Power of
Provincial
Government to
supersede a
department of a
municipality.**

550. (1) If in the opinion of the ¹[Provincial Government] the Commissioners—

(i) have shewn their incompetency to perform, or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law ; or

(ii) have exceeded or abused their powers,

in respect of any department under their control, the ¹[Provincial Government] may, except in the case of any emergency of which the ¹[Provincial Government] shall be the sole judge, by written order, direct the Commissioners within a period to be specified in the order to show cause to the satisfaction of the ¹[Provincial Government] against the making of an appointment referred to in sub-section (2).

(2) If within the period fixed by any order issued under sub-section (1) cause has not been shown to the satisfaction of the ¹[Provincial Government], it may by an order published, with the reasons for making it, in the ²[Official Gazette], appoint a suitable person to be in charge of the department for a period to be specified in the order ³[so published] who shall during such period exercise all the powers and perform all the duties of the Chairman and of the Commissioners whether at a meeting or otherwise in respect of that department.

(3) The ¹[Provincial Government] in making such order shall direct that the expense of performing the duties of the department together with such remuneration as the ¹[Provincial Government] may allow from time to time to such person shall be paid within such time as it may fix from the Municipal Fund.

¹See foot-note 3 on p. 85, *ante*.

²See foot-note 1 on p. 89, *ante*.

³These words were inserted by s. 44 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

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(Chapter XXVII.—Delegation of powers and control.—
Secs. 551—553.)

(4) If any dispute arises as to whether any particular power or duty relates to the department made over to such officer the matter shall be referred to the District Magistrate whose decision shall be final.

551. If the expense is not paid under sub-section (2) of section 549 or under sub-section (3) of section 550 the District Magistrate, with the previous sanction of the ¹[Provincial Government], may make an order directing the person having the custody of the balance of the Municipal Fund to pay the expense, or so much thereof as is from time to time payable from the balance, in priority to any other charges against the same and such person shall pay accordingly.

Power to District Magistrate to direct payment of expenses from Municipal Fund.

Page 331—

In section 552,—

- (a) omit the words “and fresh appointments shall be made”;
- (b) after the words “and appointment of Commissioners” insert the words, figures and brackets “under section 26 (if any)”;
- (c) after the words “or re-appointed” insert the words and figures “for the purpose of section 26”.

(Omitted and inserted by West Bengal Act XI of 1947, section 10.)

Power to dissolve body of Commissioners.

[No. 43, dated the 5th June, 1949.]

~~Members of the~~ body of Commissioners shall continue until that office is vacated in the manner provided by section 59.

553. If, in the opinion of the ¹[Provincial Government], the Commissioners have shown their incompetency to perform, or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, or have exceeded or abused their powers, the ¹[Provincial Government] may, by an order published with the reasons for making it, in the ²[Official Gazette], declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order :

Power to supersede Commissioners in case of incompetency, default or abuse of powers.

Provided that except in case of misappropriation of municipal funds or persistent default in the performance of duties by the Commissioners the ¹[Provincial Government] shall not ordinarily exercise power under this section until action has been taken under section 552.

¹See foot-note 3 on p. 85, ante.

²See foot-note 1 on p. 89, ante.

(Chapter XXVII.—Delegation of powers and control.—
Secs. 554, 555.)

Consequence of
supersession.

554. (1) When an order of supersession has been passed under section 553, the following consequences shall ensue :—

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners ;
- (b) all the powers and duties which may, under the provisions of this Act or any rule or by-law made thereunder, be exercisable by the Commissioners, shall, as from the date of the order, be exercisable by the Municipal Council.

Page 332—

In sub-section (2) of section 554 in clause (ii),—

- (i) omit the words “and fresh appointment”, and
- (ii) after the words “or appointment” insert the words “and figures “under section 26”.

(Omitted and inserted by West Bengal Act XI of 1947, section 11.)

[No. 43, dated the 5th June, 1949.]

... of supersession specified in the order, the ¹[Provincial Government] may—

- (i) extend the period of supersession for such further term as it may consider necessary, or
- (ii) reconstitute the Commissioners of the municipality by a fresh general election and fresh appointment and the persons who vacated their offices under clause (a) of sub-section (1) shall not be deemed disqualified for election or appointment, or
- (iii) reconstitute the Commissioners of the municipality by appointment only for such period as it may consider necessary and the persons who vacated their offices under clause (a) of sub-section (1) shall not be deemed disqualified for appointment :

Provided that the ¹[Provincial Government] may, if circumstances permit, at any time before the expiration of the period of supersession take action either under clause (ii) or clause (iii) of this sub-section.

Withdrawal of
sections expressly
extended by
the Provincial
Government.

555. Where specific provision is made in any section of this Act for its being extended by the ¹[Provincial Government] to any municipality, the ¹[Provincial Government] may, at any time, by order, withdraw any section it may thus have extended to any municipality from operation in such municipality, and such section shall cease to have effect in the said municipality from the date of such order.

¹See foot-note 3 on p. 85, ante.

²These words were substituted for the words “vest in the Government” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

Chapter XXVII.—Delegation of powers and control.—Secs. 556, 557—Schedules I and II.)

556. If any dispute arising out of the operation of this Act, for the decision of which this Act does not otherwise provide, arises between the Commissioners of any municipality constituted under this Act, and any other local authority, such dispute shall be referred to the ¹[Provincial Government] whose decision shall be final and shall not be questioned in any court. Disputes.

557. (1) The ¹[Provincial Government] may by rules alter, add to or cancel any rule or parts thereof or may by notification alter, add, or cancel any entry contained in Schedules III, IV, VII, VIII and IX to this Act. Power to Provincial Government to make rules for the amendment of certain schedules.

(2) All references in this Act to any schedule which may be amended under sub-section (1) or under sub-section (2) of section 17, or sub-section (4) of section 124 shall be construed as references to such schedules as for the time being amended.

SCHEDULE I.

[Enactments repealed.]

Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

SCHEDULE II.

(See section 17.)

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Omit Schedule II.

(Omitted by West Bengal Act XI of 1947, section 12.)

[No. 43, dated the 5th June, 1949.]

Dacca.

Chittagong.

¹See foot-note 3 on p. 85, ante.

(Schedules III and IV.)

SCHEDULE III.

(See sections 123, 168, 169, 171, 172 and 557.)

Tax on carriages, and on horses and other animals.

| | | Per half-year. | |
|---|-------|----------------|----|
| | | Rs. | a. |
| (1) On every jin-rickshaw | | 2 | 0 |
| (2) On every 4-wheeled carriage drawn by two horses | | 6 | 0 |
| (3) On every 4-wheeled carriage drawn by one horse or a pair of ponies under thirteen hands | | 4 | 8 |
| (4) On every 2-wheeled carriage | | 3 | 0 |
| (5) On every horse | | 3 | 0 |
| (6) On every pony under thirteen hands and on every mule and donkey | | 1 | 8 |
| (7) On every elephant | | 9 | 0 |
| (8) On every camel | | 4 | 0 |
| (9) On every 4-wheeled carriage drawn by one pony under thirteen hands | | 3 | 0 |

SCHEDULE IV.

(See sections 123, 182, 215 and 557.)

Tax on trades, professions and callings.

Every license shall be granted under one or other of the classes mentioned in the second column of the following table and there shall be paid half-yearly for the same a tax not exceeding the amount mentioned in that behalf in the third column of the table:—

| Serial No. | Classes. | Maximum half-yearly tax in rupees. |
|------------|----------|------------------------------------|
| 1 | 2 | 3 |

VOLUME V.

In item 1 of column 2 of the table in Schedule IV, the words "Company transacting business within the municipality" and the words "Company or association or body of individuals which exercise profession, trade or calling whatsoever".

(Substituted by notification No. 1362M., dated the 16th December, published in the *Calcutta Gazette*, 1940, Part II, I, 3742.)

[N]

17th March, 1943
Calcutta Gazette, dated

of 1932.]

(Schedule V.)

| Serial No. | Classes. | Maximum half-yearly tax in rupees. |
|------------|--|------------------------------------|
| 1 | 2 | 3 |
| | (c) More than Rs. 1,00,000 but not more than Rs. 5,00,000 .. | Rs. 50 |
| | (d) Rs. 1,00,000 or less .. | 20 |
| 2 | Merchant, banker, ¹ [not being a registered co-operative society], money-lender, whole-sale trader, owner or occupier of a market, bazar or theatre or place of public entertainment, broker or <i>dalal</i> in jute, cotton, precious stones, landed property, country produce, silk or other merchandise—whose place of business is valued under this Act at not less than— | |
| | (a) Rs. 100 per mensem .. | 50 |
| | (b) Rs. 50 per mensem .. | 25 |

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After serial No. 4 of the Schedule IV, insert the following, namely:—

| Serial No. | Classes. | Maximum half-yearly tax in rupees. |
|------------|---|------------------------------------|
| 1 | 2 | 3 |
| 5 | Itinerant vendors hawking goods for sale. | 1" |

(Inserted by notification No. M. 3L-4/51, dated the 16th January, 1952, from the Local Self-Government Department.)

[No. 49, dated the 15th September, 1952.]

Municipalities in which the rate on holdings may be fixed at fifteen per cent.

Municipality.
Howrah.
Dacca.
Kurseong.

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Put an asterisk against Schedule V and insert the following footnote after footnote 2, namely:—

*In the application of the Act to the district of Darjeeling, in Schedule V to the said Act, omit the words "Kurseong" and "Darjeeling."

(Omitted by paragraph XVII of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 1—6.)

SCHEDULE VI.

(See sections 312, 313, 317, 318, 319, 321, 322, 326, 327, 328, 329, 330 and 364.)

Rules as to the use of building-sites and the execution of building work.

SECTION A.—*Building-sites.*

1. No piece of land shall be used as a building-site unless the Chairman is satisfied—

- (a) that the site is fit to be built upon from sanitary and engineering points of view ;
- (b) that it is well-drained or is capable of being well-drained, and that the owner will take the necessary steps to drain it ; and
- (c) that where the site is within thirty feet of a tank, the owner will take such measures as shall prevent any risk of the drainage from such building passing into the tank.

SECTION B.—*Buildings generally (other than huts).*

Part I.

2. Except with the written permission of the Chairman the foundation of buildings other than huts shall rest on natural ground.

3. The spread of the foundation shall be such that the pressure on the soil, taking into account the load on the floors and terrace roof (if any) shall not in any case exceed a maximum to be laid down by the Commissioners at a meeting with the approval of the ¹[Provincial Government].

4. The depths of the foundation shall be such as the Chairman may approve.

5. The plinth of every such building, except in the case of motor garages and coach houses, shall be at least one foot six inches above the level of the centre of the nearest street.

6. The plinth of stables and cowsheds shall be at least one foot above such level.

¹See foot-note 3 on p. 85, *ante*.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 7—16.)

7. The walls of every such building shall be constructed upon proper footings.

8. The outer walls of every such building shall be constructed of brick or other substance of a hard and incombustible nature.

9. The walls of every such building shall be properly bonded.

10. If such building has more than one storey, every wall shall be of such thickness as the Chairman may consider necessary to ensure safety, regard being had to the height of the building, the materials of which it is constructed and the purpose for which it is intended to be put.

11. The floors of every such building shall be so constructed as to carry safely the maximum load, the allowance for live-load not being less than fifty-six pounds per square foot.

12. Every beam and girder in such building shall be supported by a breadth of brickwork, stone or other solid substance sufficient to secure stability.

13. The bearing of every beam or girder of a wall shall not, without the written permission of the Chairman, be less than three-fourths of the thickness of such wall.

14. No timber or woodwork in such a building shall be placed—

(a) in any wall or chimney-breast nearer than nine inches to the inside of any flue, stove-pipe or chimney-opening, and

(b) under any chimney-opening within 15 inches from the upper surface of the hearth thereof.

15. Every terraced roof shall be constructed to carry such load, not being less than forty pounds per square foot, in addition to its own weight as may be approved by the Chairman.

Part II.

16. The lowest floor of every building erected or reconstructed from the ground level shall be constructed at such a level as shall permit of such building being effectually drained and of the drainage being led into an existing or proposed public drain.

[Ben. Act XV]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 17—25.)

17. No building shall be erected or raised to a greater height than sixty feet measured from the level of the centre of the street in front—

(a) in the case of pitched roof, up to the tie-beam of the roof, and

(b) in the case of a flat roof, up to the surface of the roof.

18. In the case of a pitched roof, the roof above that height shall rise at an angle of not more than forty-five

19. In the case of a flat roof, no parapet shall be constructed more than three feet above the maximum height specified in rule 17.

20. If the width of the street does not exceed twenty-six feet, such building shall not be erected or raised to a height greater than one and a half times the width of such street.

21. If the width of the street exceeds twenty-six feet, but does not exceed forty feet, such building shall not be erected or raised to a height greater than forty feet.

22. If the width of the street exceeds forty feet, such building shall not be erected or raised to a height greater than the width of such streets.

23. Where such building abuts upon more than one street, its height shall be regulated by the wider of such streets so far as it abuts upon such wider street, and also to a distance of eighty feet from such wider street so far as it abuts upon the narrower of such streets.

24. If the face of such building is set back from the street at any height not exceeding the height specified in rule 17, such building may be erected or raised to a height greater than that so specified, but not so that any portion of such building shall intersect any of a series of imaginary straight lines drawn from the line of set-back, in the direction of the portion set-back, at an angle of forty-five degrees with the horizontal.

25. Notwithstanding anything contained in the foregoing rules any house which has been demolished may, within a period of two years, from the date of its demolition, be re-erected to a height not exceeding its original height, provided that the onus of proving the height of the original building prior to demolition shall lie upon the person applying for sanction to re-build.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 26—33.)

26. Every interior courtyard shall be raised at least one foot above the level of the centre of the nearest street, so as to admit of easy drainage into such street.

27. Every house, if this in the opinion of the Chairman be practicable, shall be provided with a secondary means of egress in case of fire.

With respect of roofs, floors and staircases.

28. The flat and roof of such building, and every turret, dormer, lantern-light, skylight, or other erection placed on the flat or roof of such building shall be externally covered with slates, tiles, metal, or other incombustible materials except as regards any door, door-frame, window or window-frame of any such turret, dormer, lantern-light, skylight, or other erection.

29. In every new public building, the floor of every lobby, corridor, passage and landing which is not intended solely as a means of access to any private apartment, and all the supports of every such floor shall be constructed of stone or other incombustible or fire-resisting materials, and shall be of adequate strength.

30. Every staircase in a new building shall be properly constructed of sound and suitable materials, and securely fixed and shall be of adequate strength.

31. In every new public building every staircase which is not intended solely as a means of access to any private apartment shall be constructed of incombustible materials, and carried by supports of incombustible materials and shall be furnished on each side with a sufficient hand-rail, properly and securely fixed.

32. In every new public building every staircase which is intended solely as a means of access to any private apartments shall be provided with a sufficient hand-rail properly and securely fixed.

33. In every new building containing separate sets of chambers or offices or rooms constructed or intended or adapted to be tenanted by different persons, and which shall exceed fifty thousand feet in cubic content, the floor or every lobby, corridor, passage and landing and every flight of stairs in any staircase in such building, and all the supports of every such floor and flight of stairs shall be constructed of stone or other fire-resisting material, and shall be of adequate

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 34—38.)

strength and the principal staircase and landings of such building shall be enclosed with walls, not less than nine inches in thickness, constructed of good, hard, sound, well-burnt bricks, stone, or other hard and incombustible materials, properly bonded and solidly put together.

SECTION C.—Dwelling houses and other domestic buildings (other than huts).

34. The total area covered by all the buildings on any site used for a dwelling house shall not exceed two-thirds of the total area of the site, and the area so covered shall form part of the site, and no building or part of a building shall be erected so as to encroach upon the area so left vacant.

35. There shall be at the back of every domestic building an open space—

- (a) extending along the entire width of the building ;
- (b) exclusively belonging to such building ;
- (c) free from any erection thereon above the level of the ground, except a water-closet, earth-closet, or ash-pit ; and
- (d) not less than ten feet in width from every part of the back of such building to the opposite boundary of the premises.

36. If the height of such building be not less than thirty feet, the width of such open space shall not be less than fifteen feet, and if such height exceed forty-five feet the width shall not be less than twenty-five feet.

37. This rule shall not apply where the back of a building abuts on a public square or street or a place dedicated to public use and not likely to be built upon not less than six feet in width, but in such cases, the height of the building shall nevertheless, in accordance with the provisions of rules 17 to 25, be regulated by the width of the public square, street or place on which it abuts.

38. For the purposes of rule 37, the back of a building shall be deemed to be that face of the building which is furthest from any street at the side of which the building is situated :

Provided that, where a building is situated at the side of more than one street, the back of the building shall, unless the Chairman otherwise direct, be deemed to be that face of the building which is furthest from the widest of such streets.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 39—41.)

39. If any person desires to erect a domestic building upon a site which is irregular or is of such a nature that it is impracticable to provide an open space in the rear of the building of the dimensions prescribed by rule 35 or rule 36, the Chairman may relax the provisions of those rules :

Provided that—

- (a) such open space shall be left as the Chairman may consider practicable, having regard to all the circumstances of the case, and
- (b) not more than two-thirds of the total area of the site shall be occupied by buildings.

40. (1) If either side of a domestic building is not attached to the adjacent building, and if such side does not abut on a public square or street which is not less than six feet in width,

there shall be between the buildings an open space extending along the entire length of such side and forming part of the said domestic building :

Provided that attachment of any building to the adjacent building shall not be allowed (except with the permission of the Chairman) if either of the buildings is a dwelling-house.

(2) The minimum distance across such space from every part of the said domestic building to the boundary line of the land or building immediately opposite such part shall be—

- (a) six feet, if there is a building next to such boundary line or within two feet of it, or
- (b) four feet, if there is an open space of two feet or more on either side of such boundary line :

Provided that, where there is a public street which is less than six feet wide by the side of the site, the owner may, by giving to the Commissioners free of charge such land as will make the street six feet wide, be exempted from leaving further side space under this rule.

41. Every room used or intended to be used for purposes of human habitation—

- (a) shall be in every part not less than nine feet in height, measured from the floor to the underside of the beam on which the roof rests ;
- (b) shall have a superficial area of not less than eighty square feet ; and

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 42—44.)

- (c) shall be provided, for purposes of ventilation, with doors or windows opening directly into the external air or into an open verandah.

42. (1) Every building used or intended to be used for purposes of human habitation shall be so constructed that every room therein shall have at least one side abutting for the whole of its length (which shall, in no case, be less than eight feet) on an open space, either external or internal. The internal open space shall, in no case, be less than eight feet across in any direction. The external open space shall in no case, be less than eight feet across in any direction, except when such open space abuts for the whole of its length on a street or other public space which is not less than fifteen feet across in any direction.

(2) A building shall not be held to contravene sub-rule (1) of this rule if one side of a room abuts on an internal or external verandah, provided that the verandah in its turn abuts for the whole of its length on an open space and that the width of such open space (not being less than eight feet) is double the width of the verandah.

(3) Every open space, external or internal, required by sub-rule (1) of this rule, shall be free and shall be kept free, from any erection thereon and shall be open to the sky.

(4) The side of every such room abutting on an external or internal open space or an external or internal verandah shall have at least one-fifth of its area occupied by doors, windows or ventilators, but, in no case, shall the area so occupied be less than twenty-four square feet. Where, in the opinion of the Chairman, it shall be considered necessary, additional ventilators of a type approved by the Chairman shall be provided in the remaining sides of such room. Such ventilators shall communicate directly with the open air.

SECTION D.—Applications for approval of sites for, and for permission to construct or reconstruct, buildings, other than huts.

43. Every application for approval of a site for a building and for permission to execute the work of constructing or reconstructing such building shall be submitted in the form given in Form A attached to these rules (to be supplied by the Chairman free of charge).

44. Every such application shall be accompanied by a site-plan in duplicate drawn to a scale of not less than one-fiftieth of an inch to a foot.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 45,46.)

45. Every such site-plan shall show—

- (a) the boundaries of the site and of any contiguous land belonging to the owner thereof,
- (b) the position of the site in relation to neighbouring streets,
- (c) the name of the street in which it is proposed to erect the building,
- (d) the position of the building, and of all other building (if any), which the applicant intends to erect upon his contiguous land referred to in clause (a), in relation to—
 - (i) the boundaries of the site, and in a case where the site has been partitioned the boundaries of the portion owned by the applicant and also the portions owned by the other owners, and
 - (ii) all adjacent streets, buildings and premises within a distance of forty-feet of the site and of the contiguous land (if any), referred to in clause (a),
- (e) the means of access from the street to the building, and to all other buildings (if any), which the applicant intends to erect upon his contiguous land referred to in clause (a),
- (f) the position and approximate height and the number of stories of all other buildings within forty feet of the site,
- (g) the position and dimensions of proposed kitchens, staircases, urinals, drains, cess-pools, stables, cattle-sheds, cow-houses, wells and other appurtenances of the building,
- (h) the free passage or way in front of the building,
- (i) the space to be left about the building to secure a free circulation of air, admission of light, and access for scavenging purposes,
- (j) the width of the street (if any) in front, and of the street (if any) at the rear of the building, and
- (k) such other particulars as may be required by the Commissioners.

46. Every application to construct or re-construct a building shall also be accompanied by a plan in duplicate of the proposed building showing both elevations and sections properly coloured and neatly and accurately drawn to a scale of not less than one-eighth of an inch to a foot.

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 47—50.)

47. Every such plan shall show—

- (a) the depth and width of the foundations of the building,
- (b) the level of the lowest floor of the building, and
- (c) the level of all courtyards and open spaces in the building or premises and the plinth level of buildings with reference to the level of the centre of the nearest street.

48. Every such application shall further be accompanied by a specification giving the following information—

- (a) the materials and method of construction to be used for external walls, party walls, foundations, roofs, floors, fire-places and chimneys ;
- (b) the manner in which roof and house drainage and the surface drainage of the site will be disposed of ;
- (c) the manner, if any, in which it is proposed to pave the courtyard and open spaces in the building or premises and the slope to which the surface is to be made in each case ;
- (d) the means of access that will be available to scavengers for the cleansing of privies ;
- (e) the purpose for which it is intended to use the building ;
- (f) the means of ingress and egress, if the building is intended to be used as a dwelling-house for two or more families or as a place for carrying on any trade or business in which more than twenty people may be employed or as a place of public resort ; and
- (g) such other particulars as may be required by the Commissioners.

49. The plans shall be signed by the applicant.

50. All information and documents which it may be found necessary to require, and all objections which it may be found necessary to make, before deciding whether a site should be approved for a building or whether permission, to construct or re-construct a building should be given, shall be required and made in one requisition and the applicant shall be apprised thereof at the earliest possible date.

671932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 51—58.)

51. Within fifteen working days from the date of receipt of an application under section 317, the Chairman may require the applicant—

- (a) to furnish him with any information on matters referred to in these rules which has not already been given in the documents thereunder, or
- (b) to satisfy him that there are no objections which may lawfully be taken to the approval of the site.

52. If any information or document required under rules 50 and 51 is, in the opinion of the Chairman, incomplete or defective, he may, within fifteen working days from the date of receipt of the same, require further information or documents to be furnished.

53. If any requisition made under rules 51 and 52 is not complied with within three months, the application under section 317 shall be refused.

54. When the Chairman has approved any site-plan or given permission to execute any work, he shall sign such site-plan of the work, as the case may be.

55. One copy of the site-plans and one copy of the building plans shall be kept at the site of the building, at all times when building operations are in progress, and such plans shall be available at all such times for the inspection of the Chairman or of any officer authorized by him in that behalf.

SECTION E.—Huts generally.

56. Except with the written permission of the Chairman, no portion of a hut shall be placed within six feet of a masonry or wooden building ; provided that this rule shall not preclude the construction of huts in compounds, in any case, where masonry or wooden outhouses would be permissible.

57. No hut shall be of more than two storeys nor exceed twenty feet in height, measured from the top of the plinth to the junction of the eaves and wall.

58. The plinth of a hut shall be raised at least one foot above the level of the centre of the nearest street or passage.

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 59—67.)

SECTION F.—Huts on lands exclusively set apart for the same.

59. Huts on land exclusively set apart for the same shall be built in continuous lines, in accordance with alignments to be prescribed by the Commissioners.

60. Where an alignment prescribed under rule 59 does not correspond with the alignment of a street, a passage of at least twenty feet, measured from eave to eave, shall be left between the rows of huts abutting on such prescribed alignment.

61. All passages referred to in rule 60 shall remain private property, subject to a right in the municipal authorities to send carts along them or otherwise make use of them for any of the purposes of this Act.

62. Notwithstanding anything contained in rule 59 huts may, with the general sanction of the Commissioners, be built so as to form an open courtyard, comprising at least one-fourth of the whole area occupied by the huts and courtyard, where the huts are of only one storey and at least one-third of such whole area where there are one or more two-storied huts on more than one side of the courtyard.

63. There shall be between any two huts a space of at least three feet, measured from eave to eave.

SECTION G.—Applications for permission to construct or reconstruct huts.

64. Every application for permission to construct or reconstruct a hut shall be submitted in the form given in Form B attached to these rules (to be supplied by the Chairman free of charge).

65. If it is intended to use the hut or part thereof for any of the purposes specified in section 370 of the Act or as a stable, cattle-shed or cow-house, the fact shall be expressly stated in such application.

66. Every such application shall be accompanied by a site-plan showing the hut, the means of access thereto from the street, and such other particulars as may be required by the Commissioners.

67. The Chairman may require the applicant—

- (a) to furnish him with any information which has not already been given; or
- (b) to satisfy him that there are no objections which may lawfully be taken to the grant of permission to execute the work.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 68, 69.—Form A .)

68. If any information or plan required under rule 66 or rule 67 is, in the opinion of the Chairman, incomplete or defective, he may require further information or a fresh plan to be furnished.

69. If any requisition made under rule 67 or rule 68 is not complied with within two months, the application received under section 317 shall be refused.

FORM A.¹

(See rule 43.)

Dated . .

Application for permission to construct or reconstruct a masonry building.

To

The Chairman,.....Municipality.

Sir,

I beg to give notice that I intend to construct or reconstruct a masonry building or make alterations in or additions to premises No., in street, ward, and in accordance with the provisions of section 317, read with section 326, I forward herewith—

- (a) a site-plan in duplicate of the land for your approval,
- (b) a plan in duplicate showing elevations and sections of the proposed building together with a specification of the work, and
- (c) other particulars.

I request that the site may be approved and that permission may be accorded to execute the work.

Signature of the owner.....

Address

¹Published under notification No. 49 T.—M., dated the 4th May 1933, in the *Calcutta Gazette* of the 18th *idem*, Pt. I, p. 729.

* (Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Form B.—Schedule VII.—Rules for the construction, etc., of private roads and ~~Rule 1.~~)

Page 348—

Put an asterisk against Schedule VI and insert the following footnote, namely:—

*In the application of the Act to the district of Darjeeling, after Schedule VI, insert a new heading "Schedule VI(A)" and the rules in Schedule O to the Bengal Municipal Act, 1884 (Bengal Act III of 1884), as amended in its application to the Darjeeling Municipality.

[Inserted by paragraph XVIII(i) of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.]

[No. 38, dated the 6th December, 1945.]

showing the hut, the means of access thereto from the street, the position and nature of the nearest source of water-supply, the purpose for which the hut is proposed to be erected and other particulars.

I request that the site may be approved and that permission may be accorded to execute the said work.

Signature of the owner

Address

SCHEDULE VII.

(See sections 474, 477 and 557.)

Rules for the construction, etc., of private roads and bridges.

PART I.—Roads.

Application for permission to construct, re-construct, or alter a private road.

1. (1) Every application for permission to construct, re-construct or alter a private road other than a footpath must be accompanied by—

- (a) a plan of the road, showing cross-sections,
- (b) type-drawings of all bridges to be provided or already provided for the road, and

¹Published under notification No. 49T.—M., dated the 4th May, 1933, in the *Calcutta Gazette* of the 18th idem, Pt. I, p. 729.

of 1932.]

(Schedule VII.—Rules for the construction, etc., of private roads and bridges.—Rules 2—9.)

(c) a description of the provision which it is intended to make or which already exists in respect of retaining-walls and revetments (if any) and drainage.

(2) Every application for permission to construct, re-construct or alter a private footpath must be accompanied by a full description of the path.

2. (1) A private road must be so constructed as to have Slope. a slope inwards towards the hillside.

(2) Such slope must be not less than the gradient of the road.

3. (1) Whenever the Commissioners so direct, the outer edge of a private road must be protected by retaining-walls, and the inner cutting by revetments. Retaining-walls and revetments.

(2) Such walls and revetments must be of such number and must be placed in such positions as the Commissioners may direct, and must be constructed in accordance with the rules contained in Schedule IX.

4. A stone-lined-drain must be provided on the inner- side of a private road, where such side is not rock. Drain.

PART II.—Bridges.

5. Every application for permission to construct, re-construct or alter a private bridge must be accompanied by drawings of the bridge. Application for permission to construct, re-construct or alter a private bridge.

6. A private bridge must be constructed so as to leave sufficient waterway to pass the *maximum* discharge of the channel spanned by the bridge. Waterway.

7. The flooring placed in the bed of the channel under a private bridge must, as far as practicable, be laid at the same slope as that of the channel. Slope of flooring under bridge.

8. When a pocket for the deposit of *debris* is cut in the hillside above a private bridge, otherwise than in solid rock, such pocket must be lined with masonry walling. Pocket above bridge.

9. When a small drain is crossed by a private road, a wooden or iron grating must, if the Commissioners so direct, be laid over the drain, instead of a covered culvert. Substitution of gratings for culverts.

(Schedule VIII.—Rules for the construction, etc., of private drains.—Rules 1 to 6.—Schedule IX.—Rules as to revetting, turfing and sloping.—Rule 1.)

SCHEDULE VIII.

(See sections 471, 482 and 557.)

Rules for the construction, etc., of private drains.

Construction of drains for sullage water.

1. Drains for sullage water shall be constructed with half or one-third glazed earthenware tile invert and cement sides.

Construction of drains for surface water

2. (1) Drains for surface water only may be constructed either of dry rubble masonry or of any other material approved by the Commissioners, and may be either rectangular or U-shaped or V-shaped in section.

(2) Such drains shall not be connected with any drain carrying sullage water or sewage.

Drains to be open.

3. Except with the written permission of the Commissioners no covered drain shall be constructed and no open drain shall be covered in.

Sectional area.

4. The sectional area of every drain shall be subject to the approval of the Commissioners.

Discharge.

5. (1) Drains must discharge into the nearest water-channel or public drain, unless in any case the Commissioners otherwise direct.

(2) The outfall of a drain into a water-channel or public drain must be protected and guided in such manner as the Commissioners may direct.

(3) Where the drain of a private road joins the drain of a public road, the former drain must be so directed or so protected by strike-boards as to minimize the risk of damage to the public drain or road.

Drain round masonry or framed building.

6. A masonry drain must be placed round every masonry or framed building or block of such buildings, and the site must be sloped from all sides towards such drain.

SCHEDULE IX.

(See sections 492 and 557.)

Rules as to revetting, turfing and sloping.

PART I.—Revetments, Retaining-walls and Toe-walls.

Foundation and bed-line.

1. (1) The foundation of every revetment, retaining-wall or toe-wall must be taken down to original and firm soil or rock; and the bed-line must be cut at right angles with the face of the revetment or wall.

of 1932.]

* (Schedule IX.—Rules as to revetting, turfing and sloping.—
Rules 2—8.)

(2) The building of any revetment, retaining-wall or toe-wall shall not be commenced until the foundation and bed-line have been inspected and approved by the Commissioners.

2. (1) A revetment, retaining-wall or toe-wall may be made of dry rubble masonry, but must, in any case in which the Commissioners so direct, be made of lime masonry. **Materials.**

(2) No stone used shall be of greater height than its length or breadth.

3. All stones used must be laid on their natural beds, and must be arranged so as to break joint as far as may be possible. **Laying of stones.**

4. (1) One through bonding-stone or line of bonding-stones must be inserted at intervals of five feet in each course, and at points intermediate between the corresponding bonding-stones of the course below. **Bonding.**

(2) Any of the bonding-stones which do not extend right through the wall must overlap each other for one-third of their length.

5. Every revetment, retaining-wall or toe-wall must be built up solid to full section; and spawls or chips shall not be used for filling the courses unless their use is unavoidable. **Solidity.**

6. Weep-holes must be provided at intervals of four feet horizontally and four feet vertically, beginning with the course immediately above ground level. **Weep-holes.**

7. (1) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is not surcharged, the mean thickness of the revetment or wall above the footings shall not be less than one-third of the vertical height of the revetment or wall, measured from the top of the footings. **Sections.**

Page 351—

Put an asterisk against Schedule IX and insert the following footnote, namely:—

*In the application of the Act to the district of Darjeeling, after Schedule IX add the following Schedule, namely:—

“SCHEDULE X.

(See Section 45.)

Municipalities in which the Chairman shall be appointed by the Provincial Government.

Municipality.

Darjeeling.”

(Added by paragraph XIX of notification No. 3435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

[No. 38, dated the 6th December, 1945.]

Page 351—

In the footnote starting with an asterisk, in Schedule X to the Bengal Municipal Act, 1932, as modified in its application to the district of Darjeeling by notification No. 3435E.A., dated the 28th February, 1936, below the word “Darjeeling” add the word “Kalimpong”.

(Added by Ben. Regn. No. VII of 1943, section 3.)

[No. 38, dated the 6th December, 1945.]

Bengal Act XX of 1932.

[THE PRESIDENCY SMALL CAUSE COURTS (BENGAL AMENDMENT) ACT, 1932.¹]

(19th January 1933.)

An Act to amend the Presidency Small Cause Courts Act, 1882.

XV of
1882.

WHEREAS it is expedient to amend the Presidency Small Cause Courts Act, 1882, in its application to the Court of Small Causes of Calcutta in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Presidency Small Cause Courts (Bengal Amendment) Act, 1932. Short title.

2. The Presidency Small Cause Courts Act, 1882, hereinafter referred to as the said Act, shall, in its application to the Court of Small Causes at Calcutta, be amended in the manner hereinafter provided. Application of Act.

3. After section 72 of the said Act, the following section shall be inserted, namely :— New section 72A.

“72A. Conveyance charges to bailiffs on such scale as may, from time to time, be fixed by the Chief Judge with the previous approval of the [Provincial Government] shall be paid previous to the issue in any suit or proceeding under this Act of processes by the persons on whose behalf such processes are issued.” Conveyance charges for service of certain processes.

4. At the end of the part (marked E) of the third schedule to the said Act for the words “four annas per day must be paid per man” the words “such sum not exceeding eight annas per day as may be fixed from time to time by the Chief Judge must be paid per man” shall be substituted. Amendment of third schedule.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, p. 448 ; and for Proceedings of the Council—see the Proceedings of the Bengal Legislative Council, Vol. XL, No. 2, p. 199.

²These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act XXI of 1932.

(THE BENGAL CRIMINAL LAW (ARMS AND EXPLOSIVES) ACT, 1932.¹)

(12th January, 1932.)

An Act to provide enhanced punishment for certain offences under the Indian Arms Act, 1878, and the Explosive Substances Act, 1908, in their application to Bengal and to make special provision for the trial of certain offences under the Indian Arms Act, 1878.

XI of 1878.
VI of 1908.

WHEREAS it is expedient to provide enhanced punishment for certain offences under the Indian Arms Act, 1878, and the Explosive Substances Act, 1908, in their application to Bengal, and for this purpose to amend the said Acts in the manner hereinafter appearing ;

AND WHEREAS it is also expedient to make special provision for the trial of certain offences under the Indian Arms Act, 1878 ;

5 & 6 Geo.
V. c. 61 ;
6 & 7 Geo.
V. c. 37 ;
9 & 10 Geo.
V. c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained, under sub-section (3) of section 80A of the Government of India Act, to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Criminal Law (Arms and Explosives) Act, 1932.

Short title
and extent.

(2) It extends to the whole of Bengal.

2. The Indian Arms Act, 1878, and the Explosive Substances Act, 1908, shall, in their application to Bengal, be amended in the manner provided in this Act.

Amendment of
Indian Arms
Act, 1878, and
Explosive
Substances Act,
1908.

3. After section 19 of the Indian Arms Act, 1878, the following section shall be inserted, namely :—

Insertion of new
section 19A in
Act XI of 1878.

“ 19A. Notwithstanding anything contained in section 19, whoever commits an offence under clause (c) or clause (e) or clause (f) of section 19 shall, if the offence is committed in respect of a pistol, revolver, rifle or shot gun, be

For breaches of
sections 6, 13, 14
and 15 in respect
of certain arms.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, p. 466 ; and for proceedings of the Council—see the Proceedings of the Bengal Legislative Council, Vol. XL, No. 2, p. 218.

356 *The Bengal Criminal Law (Arms and Explosives)
Act, 1932.*

[Ben. Act XXI of 1932.]

(Secs. 4—8.)

punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine,”

Amendment of
section 20 of
Act XI of 1878.

4. At the end of section 20 of the Indian Arms Act, 1878, the following proviso shall be added, namely :—

“ Provided that if an offence committed under this section is in respect of a pistol, revolver, rifle or shot gun, the offender shall be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine.”

Insertion of new
section 5A in
Act VI of 1908.

Enhanced
punishment for
offences under
sections 3, 4
and 5 in certain
cases.

5. After section 5 of the Explosive Substances Act, 1908, the following section shall be inserted, namely :—

“ 5A. Notwithstanding anything contained in section 3, section 4, or section 5, if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend

Ben. Act
XII of
1932.

356—

Strike out sections 6, 7 and 8, and *insert* the following note, namely :—
(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

Bengal Act XXIII of 1932.

Page 357—

Strike out Bengal Act XXIII of 1932, and *insert* the following *note*, namely:—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

An Act further to amend the Calcutta Municipal Act, 1923.

Ben. Act
III of
1923.

WHEREAS it is expedient further to amend the Calcutta Municipal Act, 1923, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Municipal (Second Amendment) Act, 1932. Short title.

2, 3. [Amendments incorporated in Bengal Act III of 1923.]

4. [Amendments incorporated in Bengal Act III of 1932.]

5. If any difficulty arises as to the preparation or publication of the electoral rolls prior to the first general elections to be held after the commencement of this Act or as to the holding or declaration of results of such elections the "[Provincial Government] may by order authorize any matter or thing to be done which appears to it to be necessary for the proper preparation or publication of the rolls or for the proper holding or declaration of the results of the elections.

Power of
Provincial
Government
in respect of first
general elections.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, p. 468 ; and for report of the Select Committee, see *ibid.*, p. 494 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XL, No. 2, pages 230 and 548.

²These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act I of 1933.

[THE HOWRAH MUNICIPAL (TEMPORARY PROVISIONS) ACT, 1933.]¹

(30th March 1933.)

An Act to provide for certain matters in connection with the extension of certain provisions of the Calcutta Municipal Act, 1923, to the municipality of Howrah.

Ben. Act
III of
1923.

WHEREAS by notification No. 260M., dated the 18th January, 1932, as amended by notification No. 1366M., dated the 21st March, 1932, issued under sub-section (2) of section 541 of the Calcutta Municipal Act, 1923, the Local Government has been pleased to extend to the municipality of Howrah certain provisions of that Act subject to the restrictions and modifications specified therein with effect from the first day of April, 1933;

AND WHEREAS it is expedient to provide for the removal of certain difficulties in the way of bringing into operation the said provisions of the Calcutta Municipal Act, 1923, in the municipality of Howrah ;

AND WHEREAS it is expedient to provide for the framing and passing of the budget estimate of the municipality of Howrah for the year 1933-34, and for fixing the rates at which taxes shall be levied and imposed for the said year under the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, and for determining the rate to be levied and imposed

Pages 359-361—

Strike out the third paragraph of the preamble and sections 3, 4 and 6, and *insert* the following note, namely:—
(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

1. (1) This Act may be called the Howrah Municipal (Temporary Provisions) Act, 1933.

Short title,
commencement
and extent.

(2) It shall come into force on the first day of April, 1933.

(3) It extends to the municipality of Howrah as constituted under the Bengal Municipal Act, 1932.

Ben. Act
XV of
1932.

2. Notwithstanding anything contained in any other law, all rules, by-laws, regulations, appointments, orders, directions and powers made, issued, conferred or continued

Savings.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1933, Pt. IV, p. 63 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLI, No. 2, p. 73.

[Ben. Act I

(Secs. 3, 4.)

under the provisions of the Calcutta Municipal Act, 1899, or of the Bengal Municipal Act, 1932, so far as they were in force in the municipality of Howrah on the thirty-first day of March, 1933, shall, so far as they are not inconsistent with the provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, be deemed to have been made, issued or conferred under the provisions of that Act and continue in force unless and until they are superseded by rules, by-laws, regulations, appointments, orders, directions or powers made, issued or conferred under the said provisions.

Ben. Act
III of
1899.
Ben. Act
XV of
1932.
Ben. Act
III of
1923.

Preparation of
budget estimate,
etc.

3. Notwithstanding anything contained in any other law, the budget estimate of the income and expenditure of the municipality of Howrah for the year 1933-34 shall be prepared by the Chairman and laid before the Commissioners at a meeting on or before the thirtieth day of April, 1933, together with a statement of proposals as to taxation which it will, in his opinion be necessary to impose under the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, and the Commissioners at a meeting shall, on or before the thirty-first day of May, 1933, consider the estimate and proposals and, subject to such modifications and additions therein and thereto as they may think fit to make, shall frame and pass a budget estimate for the year 1933-34 and fix with reference to the said budget estimates the rates at which the taxes under the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, are to be levied and imposed for the year commencing on the first day of April, 1933, and shall, subject to the provisions of section 4, determine the consolidated rate to be levied and imposed under the said Act for the said year; and such budget estimate, rates of taxes, and consolidated rate shall have effect from the first day of April, 1933.

Rates imposed
under the Bengal
Municipal Act,
1932, to be
deemed to be
consolidated rate
under the
Calcutta
Municipal Act,
1923.

4. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, the total of—

- (i) the rate on holdings,
- (ii) the lighting rate (in any),
- (iii) the water rate (in any), and
- (iv) the latrine fees (if any)

assessed and leviable under the Bengal Municipal Act, 1884, and continued under the provisions of the Bengal Municipal Act, 1932, for the year ending on the thirty-first day of March, 1933, in respect of any holding situated within the area to

Ben. Act
III of
1884.

of 1933.]

(Secs. 5, 6.)

**Ben. Act
III of
1923.**

which the provisions of Chapter X of the Calcutta Municipal Act, 1923, shall apply, shall be deemed to be the amount of the consolidated rate leviable under the provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, in respect of lands and buildings included in such holding for all purposes of the said provisions until a fresh valuation of the lands and buildings in the ward in which the premises are situated is made under the provisions of the said Calcutta Municipal Act, 1923 :

Provided that if any new building as defined in the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah is erected on any premises, or if any substantial alteration and improvement is made in any building, or if the value of any building is reduced by reason of any substantial demolition during the period mentioned in this section, a new valuation or a re-valuation of such building shall be made and the consolidated rate on the premises shall be levied at such rate as may have been fixed for the purpose of the levy of the consolidated rate. The valuation so made shall remain in force until the next general re-valuation of the ward under the provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah.

5. All sums due to the Commissioners of the municipality of Howrah as arrears of rate on holdings, of lighting rate, of water rate and of latrine fees under the Bengal Municipal Act, 1884, as continued under the provisions of the Bengal Municipal Act, 1932, which are not realized on or before the thirty-first day of March, 1933, shall be treated as arrears of consolidated rate and shall be realized under the provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah.

**Recovery of
arrear dues.**

**Ben. Act III of
1884.
Ben. Act XV of
1932.**

6. If any difficulty arises in assessing and levying a consolidated rate for the year 1933-34 or during any period until the consolidated rate is assessed and imposed under the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, in respect of any of the lands or of the lands and buildings, in that municipality, the ¹[Provincial Government] may, on the recommendation of the Commissioners of the said municipality, make such order as it thinks fit in order to enable the said Commissioners to assess and levy for that year or during such period, in respect of such land or such land and building a consolidated rate under the

**Power to remove
difficulties.**

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act I of 1933.]

(Sec. 6.)

provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah or under the provisions of this Act. Ben. Act
III of
1923.

If any difficulty arises during the year 1933-34 in assessing or levying any taxes or fees, or in realizing any arrears of any taxes or fees the ¹[Provincial Government] may, on the recommendation of the Commissioners of the municipality of Howrah, make such order as it thinks fit to enable the taxes, fees, or arrears thereof to be assessed, levied or realized.

Any such order may modify the provisions of this Act or of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, so far as to the ¹[Provincial Government] shall appear to be necessary for giving effect to this section.

¹See foot-note 1 on p. 361, *ante*.

Bengal Act VI of 1933.

The Bengal Suppression of Immoral Traffic Act, 1933.

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2. Repeals.
3. Definitions.
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5. Determination of tenancy of premises in the case of conviction under section 4.
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22. Arrest without warrant for solicitation.
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THE SCHEDULE.

Enactments Repealed.

Bengal Act VI of 1933.

(The Bengal Suppression of Immoral Traffic Act, 1933.)¹

(22nd June, 1933.)

Page

(1) In the long title, after the words "suppression of" insert the words "brothels and".

(2) In the first paragraph of the preamble, after the words "suppression of" insert the words "brothels and of".

(3) In clause (1) of section 3, omit the words "for the gain of any other person".

(Inserted and omitted by West Bengal Act XII of 1947, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

Page 365—

In the long title, after the words "suppression of" insert the words "brothels and of".

(Inserted by West Bengal Act XII of 1947, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

Page 365—

In the first paragraph of the preamble, after the words "suppression of" insert the words "brothels and".

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[No. 43, dated the 5th June, 1949.]

Page 365—

In clause (1) of section 3, omit the words "for the gain of any other person".

(Omitted by West Bengal Act XII of 1947, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

¹Amended, 1937.

²These words were substituted for the words "Calcutta Gazette", *ibid.*

³The words "or amended" which were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), are omitted.

(Sec. 3.)

or more females for the purpose of prostitution and is being maintained by or associating with any prostitute, it shall, unless such girl is the daughter of an inmate of such house or place, be presumed until the contrary is proved that she is being kept with intent that she shall be employed or used for an immoral purpose.

(2) "Commissioner of Police" means the Commissioner of Police for the town and suburbs of Calcutta, and includes a Deputy Commissioner of Police of Calcutta ;

(3) "prescribed" means prescribed by rules made under this Act ;

(4) "prostitution" means promiscuous sexual intercourse for hire, whether in money or kind ;

(5) "prostitute" means any female available for the purpose of prostitution ;

(6) "public place" includes the site of any *hat, bazar* or *mela*, the banks of any river and any docks, jetties and warehouses to which the public have access, every public building, garden, monument, and the precincts thereof, every place of public amusement, every place of public entertainment and every place accessible to the public for drawing water, washing or bathing, or for purposes of recreation.

Explanation.—(a) The expression "place of public amusement" means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided, and to which the public are admitted either on payment of money, or with the intention that money may be collected from those admitted, and includes a race-course, carnival, circus, cinema, theatre, music hall, billiard-room, bagatelle-room, gymnasium and fencing school.

(b) The expression "place of public entertainment" means any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place and includes a refreshment-room, eating-house, coffee-house, liquor-house, boarding-house, lodging-house, hotel, tea-shop, tavern and a wine, beer, spirit, *arrack*, *toddy*, *ganja*, *bhang* or opium shop.

(Sec. 4.)

(7) "Superintendent of Police" includes any Assistant Superintendent of Police or other person appointed by general or special order of the [Provincial Government] to perform all or any of the duties of a Superintendent of Police under this Act in any district.

4. (1) Any person who—

- (a) keeps or manages or acts or assists in the management of a brothel, or
- (b) being the tenant, lessee, occupier, or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel, or
- (c) being the lessor or landlord of any premises or the agent of such lessor or landlord, lets the same, or any part thereof, with the knowledge that the same, or any part thereof, is intended to be used as a brothel,

Punishment for keeping a brothel or allowing premises to be used as a brothel.

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) Any person who, having been convicted of an offence punishable under sub-section (1) is convicted of a subsequent offence punishable under the said sub-section shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may in addition be ordered by the Court convicting him to execute a bond for a sum proportionate to his means, with or without sureties, to be of good behaviour for such period not exceeding three years as it thinks fit.

(3) If a conviction under sub-section (2) is set aside on appeal or otherwise the bond so executed shall be void.

(4) An order for the execution of a bond in accordance with the provisions of sub-section (2) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) The provisions of Chapter VIII of the Code of Criminal Procedure, 1898, shall apply to orders made for the execution of bonds under this section, and imprisonment for failure to give security shall be rigorous or simple as the Court may direct.

(6) In a prosecution under this section if it is found that any premises or part thereof have been used as a brothel it shall be presumed until the contrary is proved that the

(Sec. 5.)

manager, tenant, lessee, occupier or person in charge of such premises or part knew that the premises or part thereof were being used as a brothel.

(7) No Court shall take cognizance of any offence punishable under this section except on the complaint of—

(a) (i) the Corporation of Calcutta, if the premises are situated within its jurisdiction, or

(ii) if the premises are situated elsewhere, the Chairman of the Municipality, District Board or Local Board, or the President of the Union Board, within the jurisdiction of which the premises are situated, made in pursuance of a resolution of the Commissioners of the Municipality or of the Members of the Board as the case may be ; or

(b) three or more persons occupying separate premises or holdings and resident in the vicinity of the premises or holdings to which the complaint relates ; or

(c) a representative of any society recognised by the ¹[Provincial Government] in this behalf who has been authorised by the society to institute prosecutions under this section.

(8) No complaint shall be instituted under this section in respect of any brothel with reference to which proceedings are pending under section 6.

Determination
of tenancy of
premises in the
case of a
conviction under
section 4.

5. (1) On conviction of the tenant, lessee or occupier of any premises of any offence under section 4 in respect of such premises, the landlord or lessor of such premises shall be entitled to require the person so convicted to surrender the lease or other contract under which the said premises are held by him, or to assign the said lease or contract to some person approved by the landlord or lessor, which approval shall not be unreasonably withheld, and, in the event of the person so convicted failing within three months to surrender or assign the lease or contract as aforesaid, the landlord or lessor shall be entitled to determine the lease or other contract, but without prejudice to the rights or remedies of any party to such lease accruing before the date of such determination.

(2) If the landlord or lessor determines a lease or contract of tenancy under the provisions of sub-section (1), the Court which convicted the tenant, lessee, or occupier of the premises may make an order for delivery of possession by such tenant, lessee, or occupier to the landlord or lessor within such time,

¹See foot-note 2 on p. 365, ante.

The Bengal Suppression of Immoral Traffic Act, 1933.

of 1933.]

(Sec. 6.)

not being less than seven days, as the Court may direct. A copy of the order shall be served on the person against whom it is made. If such person fails to comply with the order, he shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees or with both, and the Court may take such steps as it considers necessary to put the landlord or lessor in actual possession of the premises.

(3) The Court convicting any tenant, lessee or occupier of an offence punishable under section 4 in respect of any premises may give notice in writing of such conviction to the landlord or lessor of such premises, and if the landlord or lessor after service of the notice does not exercise his rights under sub-section (1) and subsequently during the subsistence of the lease or contract an offence under section 4 is again committed in respect of the premises, the landlord or lessor shall be deemed to have abetted such offence, unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

(4) Where a landlord or lessor determines a lease or other contract under sub-section (1), and subsequently grants another lease or enters into another contract of tenancy in respect of the same premises to, with or for the benefit of the same person he shall be deemed to have failed to exercise his rights under sub-section (1) and any offence under section 4 committed during the subsistence of the subsequent lease or contract shall be deemed for the purposes of this section to have been committed during the subsistence of the previous lease or contract unless such landlord or lessor satisfies the Court that he made reasonable inquiries to justify a *bona fide* belief that such tenant, lessee or occupier did not intend to use the premises as a brothel or to allow them to be so used.

(5) No action taken by any landlord or lessor under the provisions of this section shall be called in question in any Civil Court.

6. (1) If the Commissioner of Police or Superintendent of Police receives information that any house, room or place—

Power to order discontinuance of house, room or place as brothel, etc.

(a) is being used as a brothel or disorderly house, or for the purpose of carrying on prostitution, in the vicinity of any educational institution or of any boarding house, hostel or mess used or occupied by students, or of any place of public worship or recreation, or

(b) is used as, or for the purpose, aforesaid to the annoyance of inhabitants of the vicinity, or

(Sec. 6.)

(c) is used, as, or for the purpose, aforesaid on any main thoroughfare which has been notified as such in this behalf by the ¹[Provincial Government] on the recommendation of—

(i) the Corporation of Calcutta, if the thoroughfare is situated within its jurisdiction, or

(ii) the Commissioners of any Municipality, within whose jurisdiction the thoroughfare is situated, made in pursuance of a resolution of the Commissioners of the Municipality, or

(d) is used as a common place of assignation,

he may cause a notice to be served on the owner, lessor, manager, lessee, tenant or occupier of the house, room or place or all of them, to appear before him, either in person or by agent, on a date to be fixed in such notice, and to show cause why, on the grounds to be stated in the notice, an order should not be made for the discontinuance of such use of such house, room or place.

(2) If, on the date fixed, or on any subsequent date to which the hearing may be adjourned, the Commissioner of Police or Superintendent of Police is satisfied after making such inquiry as he thinks fit, that the house, room or place is used as described in clause (a), (b), (c) or (d) of sub-section (1), as the case may be, he may direct by order in writing to be served on such owner, lessor, manager, lessee, tenant or occupier, that the use as so described of the house, room or place be discontinued from a date not less than fifteen days from the date of the said order and be not thereafter resumed

(3) No house, room or place, concerning which an order has been made under sub-section (2), shall again be used or, be allowed to be used, in any manner described in clause (a), (b), (c) or (d) of sub-section (1), as the case may be, and the Commissioner of Police or Superintendent of Police, if he is satisfied that such house, room or place is again used in such manner, may by order in writing to be served on the owner, lessor, manager, lessee, tenant or occupier of such house, room or place, direct that the use as so described of such house, room or place be discontinued within a period of seven days and be not thereafter resumed.

(4) For the purposes of this section the decision of the Commissioner of Police or Superintendent of Police that a house, room or place is used in any manner, or for any purpose, described in clause (a), (b), (c) or (d) of sub-section (1)

¹ See foot-note 2 on p. 365, ante.

of 1933.]

(Sec. 7.)

shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(5) Whoever, after an order has been made by the Commissioner of Police or Superintendent of Police under sub-section (2) or sub-section (3) in respect of any house, room or place, uses, or allows to be used, such house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition, to or in lieu of, any fine imposed.

(6) For the purpose of an inquiry under this section the Commissioner of Police or Superintendent of Police may depute any police officer not below the rank of an inspector to make a local investigation, and may take into consideration his report thereon.

(7) The Commissioner of Police and the Superintendent of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(8) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on prostitution, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

(9) No proceedings shall be taken under this section in respect of premises which are the subject of any proceedings under section 4 or within six months of the termination of such proceedings.

7. (1) Any person who in any street or public place or within sight of, and in such manner as to be seen or heard from any street or public place, whether from within any house or building or not—

Soliciting for
purposes of
prostitution.

(a) by words, gestures, or indecent personal exposure attracts or endeavours to attract attention for the purposes of prostitution ; or

(b) solicits or molests any person for the purposes of prostitution ;

(Secs. 8—10.)

shall be punished with imprisonment of either description which may extend to one month or with fine which may extend to one hundred rupees, or with both.

(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, imprisonment in default of fine imposed under sub-section (1) may extend to one month. Act XLV of 1860.

Punishment for living on the earnings of prostitution.

8. (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of another person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

(2) Where a person is proved to be living with, or to be habitually in the company of a prostitute, or to have exercised control, direction or influence over the movements of a prostitute, in such a manner as to show that he is aiding, abetting or compelling her prostitution, it shall be presumed until the contrary is proved, that he is living on the earnings of prostitution :

Provided that the mother, or a son or daughter, of a prostitute, shall not be punished under this section for living on the earnings of such prostitute unless the Court is satisfied that such mother, son or daughter is aiding, abetting or compelling her prostitution.

Procuration.

9. (1) Any person who induces a female to go from any place with intent that she may, for the purposes of prostitution, become the inmate of, or frequent a brothel, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

(2) An offence under this section shall be triable in the place from which the female was induced to go, or in any place to which she may have gone as a result of such inducement.

Punishment for importing a female for prostitution.

10. (1) Any person who brings or attempts to bring or causes to be brought into any place in which this Act is in force any female with a view to her earning hire, or being brought up to earn hire as a prostitute, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

of 1933.]

(Secs. 11—13.)

(2) An offence under this section may be tried in any place to which the female is brought or caused to be brought, or in which an attempt to bring her is made, or in any place from which she is brought or caused to be brought, or from which an attempt to bring her is made.

11. Any person who detains—

- (a) any female under the age of eighteen years, against her will in any house, room or place in which prostitution is carried on, or
- (b) any female against her will in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, whether with any particular man or generally,

Punishment
for detention
as prostitute
or in brothels,
etc.

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees or with both.

12. If any person having the custody, charge or care of any girl under the age of eighteen years causes or encourages or abets the seduction or prostitution of that girl, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and, if a male person, shall be liable also to whipping.

Punishment for
causing or
encouraging or
abetting
seduction or
prostitution of
girl.

13. The Commissioner of Police, Superintendent of Police, or a police officer not below the rank of a sub-inspector specially authorised in writing in this behalf by the Commissioner of Police or Superintendent of Police, may enter any premises if he has reason to believe—

Removal of
minor girls
from premises
in certain cases.

- (a) that an offence punishable under section 4 has been committed or is being committed in respect of the premises; or
- (b) that a female in respect of whom an offence punishable under section 8, 9, 10, 11 or 12 has been committed is to be found therein;

and may remove any girl who appears to him to be under the age of eighteen years, if he is satisfied—

- (a) that an offence punishable under section 4 has been committed or is being committed in respect of the premises; or
- (b) that an offence punishable under section 8, 9, 10, 11 or 12 has been committed in respect of the girl.

(Secs. 14—16.)

Disposal of
minor girls
removed from
premises under
section 13.

14. (1) A girl who has been removed from any premises under section 13 and who appears to be under the age of sixteen years shall be brought before a Juvenile Court as defined in clause (3a) of section 3 of the Bengal Children Act, 1922, having jurisdiction over the place where the premises are situated. The Court shall make such inquiry as it thinks fit and, if satisfied that the girl is under the age of sixteen years and that she should be dealt with as hereinafter provided, may pass an order that she be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period, or make her over to the care of a suitable person under such conditions as may be prescribed and may in addition make an order that she be placed under the supervision of a person to be named by the Court.

Ben. Act
II of 1922.

(2) Where a girl has been removed from any premises under section 13 and there is no Juvenile Court having jurisdiction over the place where the premises are situated or the girl appears to be above the age of sixteen years, she shall be brought before a Magistrate of the first class having jurisdiction over such place. The Magistrate shall make such inquiry as he thinks fit and, if satisfied that the girl is under the age of eighteen years and that she should be dealt with as hereinafter provided, may pass an order that she be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period, or make her over to the care of a suitable person under such conditions as may be prescribed and may in addition make an order that she be placed under the supervision of a person to be named by the Magistrate.

Validity of
determination of
age by Juvenile
Court or
Magistrate.

15. No order made by a Juvenile Court or a Magistrate under section 14 shall be invalidated by any subsequent proof that the age of the girl has not been correctly determined by the Court or the Magistrate.

Power to call
for record.

16. Where any girl is produced before a Juvenile Court or a Magistrate under section 14 and any person has been tried by any Court on a charge under sections 8, 9, 10, 11 or 12 in respect of such girl or under section 4 in respect of the premises from which she has been removed, the record of such trial may be called for by the Juvenile Court or the Magistrate and the record of evidence given in such trial may be used by such Juvenile Court or Magistrate for the purposes of the inquiry under section 14, as if recorded by such Court or Magistrate respectively.

Nothing in this section shall prevent any Juvenile Court or Magistrate hearing and recording the evidence of any witness if such Court or Magistrate thinks fit.

(Secs. 17—20.)

17. (1) When a girl has been removed from any premises under the provisions of section 13, the officer carrying out the removal shall, until such girl can be brought before a Juvenile Court or Magistrate of the first class, cause her to be detained in such place as may be prescribed in this behalf by the ¹[Provincial Government].

Intermediate custody of girls removed from premises under section 13.

(2) When such girl is produced, the Juvenile Court or the Magistrate, as the case may be, may order her to be detained until the disposal of her case in such place as may be prescribed in this behalf by the ¹[Provincial Government] or may make her over to the care of a suitable person and may order such person to execute a bond for her production.

18. (1) When an order has been passed by a Juvenile Court or a Magistrate under section 14 for the custody of a girl, such Court or Magistrate may order the parent or other person liable to maintain the girl to contribute to her maintenance, if able to do so, in the prescribed manner.

Contribution of parents.

(2) The Court or Magistrate, before making an order under sub-section (1), shall inquire into the circumstances of the parent or other person liable to maintain the girl and shall record the evidence, if any, in the presence of the parent or such other person, as the case may be, if he appears, or, when his personal attendance is dispensed with, in the presence of his pleader.

Act V of 1898.

(3) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

19. Notwithstanding anything contained in any other law, any person to whose custody a girl is committed by an order made under section 14 shall, while the order is in force, have the like control over the girl as if he were her parent and shall be responsible for her maintenance and protection and the girl shall continue in his custody notwithstanding that she is claimed by her parent or any other person.

Authority of persons having custody of girl.

20. The ¹[Provincial Government] may cause any institution in which any girl is kept for the time being in pursuance of an order made under section 14 and which is supported wholly or partly by voluntary contributions, and is not liable to be inspected by or under the authority of ²[any Government] to be visited and inspected from time to time by persons appointed by the ¹[Provincial Government] for the purpose.

Inspection of institutions where girls are kept.

¹See foot-note 2 on p. 365, *ante*.

²These words were substituted for the words "the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 21—26.)

Appeal from
orders by
Juvenile Court
or Magistrate.

21. An appeal shall lie from any order passed under section 14 or section 18 by a Juvenile Court or by a Magistrate—

(a) if the Juvenile Court or the Court of the Magistrate is situated within the limits of the jurisdiction of the Chief Presidency Magistrate, to the Chief Presidency Magistrate; and

(b) in any other case, to the District Magistrate of the district within which such Juvenile Court or the Court of such Magistrate is situated.

Arrest without
warrant for
solicitation.

22. Any police officer may, at the instance of any person aggrieved, arrest without warrant any person who, in his sight and in a public place, solicits any person for the purposes of prostitution to the annoyance of the person solicited or of two or more inhabitants of the locality or passers-by, if the name and address of the person soliciting be unknown to him and cannot be ascertained by him then and there.

Offences triable
only by
Presidency or
First Class
Magistrates.

23. Notwithstanding anything contained in Schedule II to the Criminal Procedure Code, 1898, no Magistrate other than a Presidency Magistrate or Magistrate of the first class shall try any offence punishable under section 4, 5, 6, or 12.

Act V
of 1898.

Bonds.

24. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall apply to bonds taken under this Act, or under the rules made under section 27.

Notices.

25. Whenever a notice or copy of an order may be served under the provisions of this Act, such service shall be made in the manner provided for the service of a summons in the Code of Criminal Procedure, 1898, provided that if service is to be made under the provisions of section 71 of that Code, and it is not known where the person on whom such notice or the copy of such order is to be served ordinarily resides, the serving officer shall affix one of the duplicates of such notice or such copy of such order to some conspicuous part of the premises to which such notice or order relates.

Limitation
of actions.

26. The provisions of section 99 of the Calcutta Police Act, 1866, shall apply to all actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done, under the provisions of this Act in the town of Calcutta, as defined in the said Act; and the provisions of section 42 and section 43 of the Police Act, 1861, shall apply to all actions and prosecutions for anything done or intended to be done under the provisions of this Act elsewhere.

Ben. Act
IV of
1866.

V of 1861.

(Sec. 27.)

27. (1) The ¹[Provincial Government] may subject to the **Rules.** condition of previous publication make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules—

- (a) prescribing the fee to be paid for inspection of a register maintained under sub-section (7) of section 6 ;
- (b) prescribing the manner in which girls may be placed in suitable custody under sub-section (1) and sub-section (2) of section 14 and the places in which they may be kept, and providing for the care, treatment, instruction, maintenance, and supervision of such girls ;
- (c) prescribing the conditions under which girls may be made over to the care of a suitable person under sub-section (1) and sub-section (2) of section 14 ;
- (d) prescribing the places in which girls may be detained under the provisions of sub-section (1) and sub-section (2) of section 17 ;
- (e) prescribing the manner in which the managers of any institution prescribed as suitable custody may board out or license any girl placed in such custody under section 14, and providing for the supervision of such girls when boarded out or licensed ;
- (f) providing for bonds to be taken from persons with whom such girls are boarded out, or who take them on license ;
- (g) providing for bonds to be taken by a Juvenile Court or by a Magistrate when making such girls over to suitable custody, not being the custody of a notified institution, and for the form of such bonds, and the conditions to be contained therein, and for cancelling such bonds, and for making further provisions for the suitable custody of such girls on forfeiture of such bonds ;
- (h) regulating the contribution by parents and other persons liable to maintain girls placed in suitable custody.

¹See foot-note 2 on p. 365, *ante*.

THE SCHEDULE.

(See section 2.)

Enactments Repealed.

| Serial No. | Year. | Number. | Short-title. | Extent of repeal. |
|------------|---------|---------|---|---|
| 1 | 2 | 3 | 4 | 5 |
| | | | <i>Bengal Acts.</i> | |
| 1 | 1866 .. | II .. | The Calcutta Suburban Police Act, 1866. | (i) Sections 41A and 43A. (ii) In clause (a) of sub-section (I) of section 43, the words, figures and letter "other than section 41A." " |
| 2 | 1866 .. | IV .. | The Calcutta Police Act, 1866. | (i) Sections 68B and 72A. (ii) In clause (a) of sub-section (I) of section 72, the words, figures and letter "other than section 68B." |
| 3 | 1922 .. | II .. | The Bengal Children Act, 1922. | Section 41. |
| 4 | 1923 .. | XIII .. | The Calcutta Suppression of Immoral Traffic Act, 1923. | The whole Act. |
| | | | <i>Eastern Bengal and Assam Act.</i> | |
| 5 | 1907 .. | II .. | The Eastern Bengal and Assam Disorderly Houses Act, 1907. | The whole Act. |

Bengal Act VII of 1933.

(THE BENGAL MONEY-LENDERS ACT, 1933.)¹

(26th October 1933.)

An Act to provide more effectual control of money-lending in Bengal.

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lending in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 & 6 Geo.
V, c. 61
6 & 7 Geo.
V, c. 37 ;
9 & 10
Geo.
V, c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Money-lenders Act, 1933.

Short title,
extent
and com-
mencement.

(2) It extends to the whole of Bengal :

Provided that nothing in this Act shall apply to any loan made within the limits of the Ordinary Original Jurisdiction of the High Court or under a contract made within those limits.

(3) It shall come into force on such date² as the ³[Provincial Government] may, by notification in the ⁴[Official Gazette], appoint.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(1) "money-lender" means any person who grants a loan of money ; and

(2) "prescribed" means prescribed by rules made under this Act.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, p. 441 ; and for report of the Select Committee, see *ibid*, 1933, Pt. IV, p. 2, and for further report of the Select Committee see *ibid*, 1933, Pt. IV, p. 178 ; and for Proceedings of Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXIX, No. 6, p. 201 and *ibid*, Vol. XL, No. 1, p. 82 and *ibid*, Vol. XLII, No. 1, p. 230 and *ibid*. No. 2, pages 57, 107, 167 and 214.

²The Act came into force on the 1st July, 1934, vide Notification No. 9039 J., dated the 19th December, 1933, published in the *Calcutta Gazette*, dated the 28th December 1933, Pt. I, p. 1908.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*" *ibid*.

(Secs. 3—7.)

Presumption in
case of certain
loans.

3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive. X of 1918.

Power to limit
interest
recoverable
in certain

4. Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

Maximum rate
of interest
recoverable
under a
contract which
provides for
the payment
of compound
interest.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten *per cent. per annum* in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Bar to recovery
of interest
exceeding the
principal.

6. No Court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Money-lender
to supply
debtor with
particulars
of loan.

7. (1) Every money-lender, on demand made in the prescribed form by a debtor by registered post, shall supply such debtor with such particulars as may be prescribed concerning any loan made by him to the debtor on account of which any sum is due from the debtor.

(2) A money-lender who sends by registered post to the debtor at the address mentioned in the form of demand the particulars referred to in sub-section (1) shall be presumed to have complied with the demand made under that sub-section.

(3) Where a money-lender has complied with a demand made by a debtor under sub-section (1) the debtor shall

of 1933.]

(Secs. 8—10.)

not be entitled to make a further demand under the said sub-section in respect of the same loan within a period of six months from the date of such compliance.

8. If a money-lender to whom a demand has been made in accordance with the provisions of sub-section (1) of section 7 fails without reasonable excuse to comply therewith within a month from the date of the service of the demand, interest shall not be chargeable in respect of the loan concerning which the demand was made for so long as the default continues.

Failure to supply particulars under section 7.

9. (1) Where a debtor has sent to a money-lender by postal money-order any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same the debtor may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender and the Court on receiving the prescribed fee from the debtor shall keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

Deposit in Court of money due to money lender.

(2) If a money-lender accepts money sent in the manner specified in sub-section (1) by a debtor or withdraws money deposited under the said sub-section he shall not be bound by any statement made by the debtor in remitting or depositing the money.

10. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (i) the form of a demand by a debtor and the particulars to be supplied by a money-lender under sub-section (1) of section 7 ; and
- (ii) the manner in which an application for deposit is to be made under sub-section (1) of section 9, the fee to be paid for such application, and the manner in which a notice of the deposit is to be sent to the money-lender.

²(3) The powers conferred by this section on the Provincial Government shall, in relation to banking business carried on by any corporation, be powers of the Central Government.

¹See foot-note 3 on p. 379, *ante*.

²Sub-section (3) was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act X of 1933.

(THE BENGAL PLACES OF PUBLIC AMUSEMENT ACT, 1933.)¹

(9th November 1933.)

An Act to provide for the better control of certain places of public amusement.

WHEREAS it is expedient to provide for the better control of certain places of public amusement and for the prevention of gambling in such places ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37;
9 & 10
Geo. V.
c. 101,

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Places of Public Amusement Act, 1933.

Short title,
local extent and
commencement.

(2) It extends to the whole of Bengal.

(3) This section, section 3 and section 12 shall come into force at once and the ²[Provincial Government] may, by by notification in the ³[*Official Gazette*], direct that the remaining provisions of the Act shall come into force in any area on such date as may be appointed in the notification.

2. In this Act unless there is anything repugnant in the subject or context—

Definitions.

Ben. Act
IV of 1866.

Ben. Act
II of 1866.

XV of
1908.

(1) " Calcutta " means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908 ;

(2) " Commissioner of Police " means the officer vested with the administration of Police in Calcutta

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1933, Pt. IV, page 156, and for report of the Select Committee, see *ibid* p. 274 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLII, No. I, p. 157 and *ibid*, Vol. XLII, No. 3, p. 66.

²These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words " *Calcutta Gazette*," *ibid*.

(Secs. 3—5.)

under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, the Calcutta Police Act, 1890, and any Act amending any of these Acts ;

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
Ben. Act
III of 1890.

- (3) "place of public amusement" means any place, enclosure, building, vessel, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game or the means of carrying on the same is provided and to which the public are admitted either free or on payment of money or on any other consideration and includes a carnival, circus or amusement park ;

- (4) "prescribed" means prescribed by rules made under this Act.

Power to declare notified places of public amusement.

3. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], declare that any places, or classes of places, of public amusement, specified in the notification, shall be notified places of public amusement for the purposes of this Act.

Prohibition to open or keep open a notified place of public amusement without a licence.

4. No person shall without, or otherwise than in conformity with the conditions of, a licence granted under this Act open or keep open any notified place of public amusement.

Licence to open and keep open a notified place of public amusement.

5. (1) The Commissioner of Police in Calcutta and elsewhere the District Magistrate within the limits of his jurisdiction, may, on receipt of an application in the prescribed form, containing the prescribed particulars, and on payment of the prescribed fee, grant to any person a licence to open a notified place of public amusement and to keep the same open for such period as may be specified in the licence on such conditions as may be prescribed in this behalf.

(2) When under any law a licence is required from any local authority for any place which is a notified place of public amusement under this Act, no licence shall be granted under this Act in respect of such place until a licence has been obtained from the local authority concerned.

(3) A licence may be refused in any case in which the Commissioner of Police or the District Magistrate, as the case may be, has reason to believe that the notified place of public amusement will be conducted in contravention of any of the conditions of a licence which he is empowered to grant under this Act or is likely to lead to a breach of the peace, or to cause obstruction, annoyance or injury to residents in the locality.

¹See foot-note 2 on p. 383, *ante*.

²See foot-note 3 on p. 383, *ante*.

of 1933.]

(Secs. 6—9.)

6. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], declare that the playing in any notified place of public amusement of any game or class of games specified in the notification is, in its opinion, against the public interest.

Power to declare certain games to be against public interest.

7. The Commissioner of Police in Calcutta or elsewhere the District Magistrate within the limits of his jurisdiction may, by an order in writing served in the prescribed manner, suspend the playing, pending the receipt of the opinion of the ¹[Provincial Government], in any notified place of public amusement, of any game or class of games which, in his opinion, is against the public interest and shall forthwith refer the matter to the ¹[Provincial Government] for opinion :

Power to suspend the playing of certain games.

Provided that no such order shall remain in force for more than two months after it is made.

8. (1) If the Commissioner of Police in Calcutta or elsewhere the District Magistrate, within the limits of his jurisdiction, is satisfied that any notified place of public amusement is being kept open without, or in contravention of the conditions of, a licence granted under this Act he may by an order in writing, served in the prescribed manner, direct that such place shall be closed within such period as may be specified in the order. If the place is not closed within the period so specified any police officer authorized in writing in this behalf by the Commissioner of Police or the District Magistrate, as the case may be, may take any steps which may be necessary to close the said place.

Power to close any notified place of public amusement.

(2) The owner, the lessee or the manager of such place may apply in the prescribed manner to the Commissioner of Police or the District Magistrate, as the case may be, for revision of an order passed by him under sub-section (1).

(3) Any police officer not below the rank of an Assistant Sub-Inspector may enter any notified place of public amusement if he has reason to believe that such place is being kept open in contravention of the conditions of a licence granted under this Act.

9. If a notified place of public amusement is opened or kept open without, or in contravention of the conditions of, a licence granted under this Act the owner, the lessee or the manager of such place shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Penalty for unlawfully keeping open a notified place of public amusement.

¹See foot-note 2 on p. 383, *ante*.

²See foot-note 3 on p. 383, *ante*.

(Secs. 10—12.)

Penalty for con-
travention of an
order under sec-
tion 8.

10. If a notified place of public amusement is kept open in contravention of an order served under section 8 the owner, the lessee or the manager of such place shall be punishable with fine which may extend to one thousand rupees for every day on which such place is kept open in contravention of the said order.

Powers of Deputy
Commissioner of
Police and Sub-
divisional
Magistrate.

11. The ¹[Provincial Government] may empower any Deputy Commissioner of Police in Calcutta or elsewhere any Subdivisional Magistrate to exercise within the limits of his jurisdiction any of the powers of the Commissioner of Police or of the District Magistrate, as the case may be, under this Act :

Provided that any order passed by a Deputy Commissioner of Police or Subdivisional Magistrate may be reversed or modified by the Commissioner of Police or the District Magistrate, as the case may be.

Rules.

12. (1) The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form of applications for the grant of licences under this Act and the particulars to be contained in such applications ;
- (b) the form of licences to be granted under this Act and the fees to be paid for such licences ;
- (c) the conditions of licences to be granted under this Act :

Provision may be made by such conditions—

- (i) for the conduct of the notified place of public amusement in a decent and orderly manner and for securing the decent and orderly behaviour of all persons visiting the same ;
- (ii) for the prevention of gambling therein ;
- (iii) prohibiting the playing of any game or class of games which in the opinion of the ¹[Provincial Government] is against the public interest ; and

¹See foot-note 2 on p. 383, *ante*.

²See foot-note 3 on p. 383, *ante*.

of 1933.]

(Sec. 13.)

- (iv) prohibiting the playing, pending the receipt of the opinion of the ¹[Provincial Government], of any game or class of games the playing of which is suspended under section 7;
- (d) the manner in which orders made under section 7 or section 8 shall be served ;
- (e) the manner of making applications under sub-section (2) of section 8 for revision of an order passed under sub-section (1) of that section.

13. No civil or criminal proceeding shall be instituted **Indemnity.** against any person for anything in good faith done or intended to be done under this Act.

¹See foot-note 2 on p. 383, *ante*.

Strike out "the Cattle-trespass (Bengal Amendment) Act, 1934 (Ben. Act V of 1934)" and insert the following note, namely:—
(Repealed by Bengal Act IV of 1947, section 4.)

[No. 42, dated the 12th January, 1948.]

An Act further to amend the Cattle-trespass Act, 1871, in its application to Bengal.

I of 1871. WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, in its application to Bengal in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Cattle-trespass (Bengal Amendment) Act, 1934. Short title.

2. The Cattle-trespass Act, 1871, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided. Application of Act.

3. After section 31 of the said Act the following section shall be inserted, namely :— Insertion of new section 32 in Act I of 1871.

Ben. Act V of 1919. " 32. (1) The Magistrate of the District may appoint for the purposes of this Act, a President of a Union Board constituted under the Bengal Village Self-Government Act, 1919, to discharge the functions of an officer appointed under section 14, in respect of cattle impounded within the local area subject to the jurisdiction of that Union Board : Power for Magistrate of the District to appoint Presidents of Union Boards to discharge the functions of an officer under section 14.

Provided that a President so appointed may, by general or special order, delegate all or any of his functions under section 14 to the Vice-President of such Union Board and may at any time withdraw the same.

(2) A President so appointed or Vice-President to whom the President may delegate his functions shall not, directly or indirectly, purchase any cattle at a sale under this Act."

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1934, Pt. IV, page 84, and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIII, No. 3, p. 143.

Bengal Act VI of 1934.

(THE BENGAL SMUGGLING OF ARMS ACT, 1934.)¹

(12th April 1934).

An Act for the prevention of smuggling of arms and ammunition in Bengal.

WHEREAS it is expedient to make better provision for the prevention of smuggling of arms and ammunition in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Smuggling of Arms Act, 1934. Short title and extent.

(2) It extends to the whole of Bengal.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

XI of 1878.

(1) “ arms ” and “ ammunition ” have the same meaning as in section 4 of the Indian Arms Act, 1878 ;

(2) “ Bengal ” means the Presidency of Bengal, as constituted on the 1st day of April, 1912 ;

(3) “ Commissioner of Police ” means the officer vested with the administration of police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, and the Calcutta Port Act, 1890 ;

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
Ben. Act
III of
1890.

(4) “ notified area ” means any area which is declared to be a notified area under section 3 ;

(5) “ smuggler of arms ” includes any person who—

(a) smuggles arms or ammunition into or from Bengal, or abets such smuggling ;

(b) sells, purchases, receives or transports, or abets the sale, purchase, receipt or transport of, arms or ammunition which he knows or has reason to believe to have been smuggled ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1934, Pt. IV, page 13 ; and for report of the Select Committee, see *ibid.*, p. 86 ; and for Proceedings in Council see the Proceedings of the Bengal Legislative Council, Vol. XLIII, No. 1, pages 75 and 82 ; and *ibid* No. 3, p. 145.

(Secs. 3—5.)

(c) has been convicted by any Court in India of an offence connected with the smuggling of arms or ammunition; or

(d) has been externed from any part of India outside Bengal for any act connected with the smuggling of arms or ammunition.

Power to
declare notified
area.

3. The ¹[Central Government] may, by notification in the ²[*Official Gazette*], declare that any area specified in the notification shall be a notified area for the purposes of this Act.

Report by
Commissioner
of Police or
District
Magistrate.

4. Whenever it shall appear to the Commissioner of Police or any District Magistrate that there is within a notified area within his jurisdiction any person who—

(a) is a smuggler of arms, and

(b) resides within or habitually visits or frequents such notified area,

the Commissioner of Police or the District Magistrate may make a report to the ¹[Central Government] with a recommendation that such person be dealt with under the provisions of this Act.

Issue of
warrant on
receipt of
report.

5. (1) On receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the ¹[Central Government] may make an order for the issue of a warrant for the arrest of the person against whom the report has been made.

(2) The warrant shall be in such form as shall be prescribed by the ¹[Central Government] by notification in the ²[*Official Gazette*] and shall be issued by the Commissioner of Police or the District Magistrate, as the case may be, and shall contain a statement of the heads of the charges against such person, and shall require him to submit by petition to the advising Judges appointed under sub-section (1) of section 6, by such date as may be specified in the warrant, any representation that he may desire to make.

(3) The person arrested under such warrant shall be detained in custody until the final order of the ¹[Central Government] under section 7 is communicated to him, unless the officer by whom the warrant is issued directs, in his discretion, that such person shall be released from custody on his executing, to the satisfaction of such officer, a bond with sufficient sureties for his attendance at such place and at such time or times as may be specified in the warrant and thereafter as such officer may direct :

¹These words were substituted for the words "Local Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "*Calcutta Gazette*," by paragraph 4 (1), *ibid*.

of 1934.]

(Sec. 6.)

Provided that while such person is detained in custody he shall be given reasonable facilities, under proper safeguards, for communicating with his legal adviser.

(4) The Commissioner of Police or the District Magistrate by whom such warrant is issued shall have—

(i) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as the Commissioner of Police or the District Magistrate may direct), in order to communicate to such person the final order of the ¹[Central Government] made under section 7, and

Act V of
1898.

(ii) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times,

all the powers of a Presidency Magistrate or of such District Magistrate, respectively, under the Code of Criminal Procedure, 1898; and the warrant shall for the purposes set forth in clauses (i) and (ii) be deemed to be a warrant issued by a Presidency Magistrate or a District Magistrate, as the case may be, for the arrest of the said person to answer a charge in respect of a non-bailable offence committed by him within the jurisdiction of such Magistrate.

6. (1) After issue of the warrant under section 5, the ¹[Central Government] shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in its possession relevant to the same, to be placed before two advising Judges, of whom one shall be the District and Sessions Judge having local jurisdiction over the notified area or any portion thereof concerned and the other a District and Sessions Judge or Additional District and Sessions Judge who has held judicial office not below that of an Additional District and Sessions Judge for a total period of not less than three years.

Central
Government to
place report
before advising
Judges.

Explanation.—For the purposes of this sub-section the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908, shall be deemed to be included within the limits of the local jurisdiction of the District and Sessions Judge of the district of the 24-Parganas.

Ben. Act
IV of
1866.

Ben. Act II
of 1866.
XV of
1908.

¹See foot-note 1 on p. 394, ante.

(Sec. 6.)

(2) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the ¹[Central Government], and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 5 or such further time as they may allow, and shall call for such further information, if any, and may examine such witnesses, if any, as shall appear to them to be necessary to enable them to tender their advice on the report. They shall also give to the person against whom the report has been made, if he so desires, an opportunity of appearing in person before them to offer his explanation, and may at the instance of that person require the attendance of any other person, whose statement may support that explanation :

Provided that—

- (a) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the ¹[Central Government] be so entitled,
- (b) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and
- (c) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(3) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (2) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898.

Act XLV
of 1860.

Act V of
1898.

(4) When the advising Judges have reached their conclusions, they shall report the same in writing to the ¹[Central Government].

(5) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in Bengal or that he is a member of a family which has definitely settled in Bengal and is himself so settled, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police

¹See foot-note 1 on p. 394, ante.

of 1934.]

(Secs. 7, 8.)

or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the ¹[Central Government] shall record their opinion as to whether such person has established his claim.

7. (1) On receipt of the report of the advising Judges the ¹[Central Government], if satisfied that the person against whom the report has been made, should be removed elsewhere, may by an order reciting the conclusions of the advising Judges, as reported by those Judges,—

Order of
removal by
Central
Government.

(a) direct him to leave Bengal within such time, by such route or routes, and for such period as may be stated in the order, or

(b) where the ¹[Central Government] is satisfied that both he and his father were born in Bengal, or that he is a member of a family which has definitely settled in Bengal and is himself so settled, direct him to leave the notified area within such time, by such route and for such period as may be stated in the order, and may in that case further order that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the ¹[Central Government] in this behalf.

(2) The order of the ¹[Central Government] under subsection (1) shall be final, and shall not be called in question in any subsequent proceeding under section 10 or section 11 :

Provided that the ¹[Central Government] may, at any time, cancel or suspend such order or reduce the period for which the said person is required to leave Bengal or the notified area.

8. Where any person on whom a warrant has been served under section 5—

Evasion of
orders.

(i) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the ¹[Central Government] under section 7, or

(ii) prior to the issue of that order, leaves Bengal or the notified area, as the case may be,

the ¹[Central Government] may issue the order under section 7 in the absence of that person by publishing the same in the ²[Official Gazette], and such person shall be deemed to have absconded in order to evade that order :

¹See foot-note 1 on p. 394, *ante*.

²See foot-note 2 on p. 394, *ante*.

(Secs. 9—12.)

Provided that the ¹[Central Government] may condone a failure to attend under clause (i), on reasons for such non-attendance being furnished to its satisfaction, and in that case such person shall not be deemed to have absconded in order to evade the order.

Identification
order.

9. Every person in respect of whom an order has been made under section 7 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be,—

- (i) present himself to be photographed ;
- (ii) allow his finger impression to be recorded ;
- (iii) if literate, furnish such officer with specimens of his handwriting and signature ; and
- (iv) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, may direct for all or any of the aforesaid purposes.

Penalty for
breach of order
under section 7.

10. When any person, against whom an order has been made under section 7, fails to comply with such order within the time specified therein or after complying with the same order returns to, or after evading the same order returns to or remains in, any place within Bengal or the notified area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 7, such person may be arrested without a warrant by a police officer and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for
breach of
order under
section 9.

11. (1) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 9 shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any offence under this section or under section 10 shall be deemed to be a non-bailable offence.

Operation of
other penal
laws not
barred.

12. Nothing contained in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under such other law.

¹See foot-note 1 on p. 394, ante.

Bengal Act VII of 1934.

(THE BENGAL CRIMINAL LAW AMENDMENT ACT, 1934.)¹

(29th March 1934).

An Act to supplement the criminal law in Bengal.

WHEREAS it is expedient to supplement the criminal law in Bengal for the purpose of dealing more effectively with the terrorist movement and to that end to amend the Indian Arms Act, 1878, the Explosive Substances Act, 1908, and the Indian Press (Emergency Powers) Act, 1931, in their application to Bengal, and also to amend the Bengal Criminal Law Amendment Act, 1925, the Bengal Criminal Law Amendment Act, 1930, and the Bengal Suppression of Terrorist Outrages Act, 1932, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Criminal Law Amendment Act, 1934. Short title.

2. The Indian Arms Act, 1878, the Explosive Substances Act, 1908, and the Indian Press (Emergency Powers) Act, 1931, shall, in their application to Bengal, be amended in the manner provided in this Act. Amendment of Indian Arms Act, 1878, Explosive Substances Act, 1908, and Indian Press (Emergency Powers) Act, 1931.

3. In section 19A of the Indian Arms Act, 1878, for the words, brackets, and letters “ under clause (c) or clause (e) or clause (f) ” the words, brackets and letters “ under clause (a), (c), (e) or (f) ” shall be substituted. Amendment of section 19A of Act XI of 1878.

4. After section 20 of the Indian Arms Act, 1878, the following section shall be inserted, namely :— Insertion of new section 20A in Act XI of 1878.

“ 20A. Notwithstanding anything contained in this Act, whoever goes armed with a pistol, revolver, rifle or other fire-arm in contravention of the provisions of section Enhanced punishment in certain cases.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1934, Pt. IV, page 101, and for report of the Select Committee, see *ibid*, page 106 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIII, No. 2, pages 30 and 84 and *ibid*, No. 4, pages 442, 492, 533, 579, 630 and 695.

(*Secs. 5, 6.*)

13, or has any such fire-arm in his possession or under his control in contravention of the provisions of section 14 or section 15, under circumstances indicating that he intended that such fire-arm should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term or with imprisonment for a term which may extend to fourteen years, to which fine may be added."

Insertion of new section 5B in Act VI of 1908.

Enhanced punishment in certain cases.

5. After section 5A of the Explosive Substances Act, 1908, the following section shall be inserted, namely :—

"5B. Notwithstanding anything contained in this Act, any person who makes or has in his possession any explosive substance under circumstances indicating that he intended that such explosive substance should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added."

Insertion of new sections 2A and 2B in Act XXIII of 1931.

6. After section 2 of the Indian Press (Emergency Powers) Act, 1931, the following sub-heading and sections shall be inserted, namely :—

"*Prohibition of publication of certain information.*

Power to prohibit publication of certain information.

2A. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification, the publication in any newspaper, news-sheet, pamphlet, leaflet or other document of any class of information which, in the opinion of the ¹[Provincial Government], tends to excite sympathy with, or secure adherents to, the terrorist movement.

Prohibition of publication of names, etc., of certain witnesses.

2B. Neither the name nor the designation nor any words, signs or visible representations disclosing the identity of any witness in a trial by Commissioners appointed under the Bengal Criminal

¹These words were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Local Official Gazette", *ibid.*

of 1934.]

(Secs. 7—27.)

Ben. Act
XII of
1932.

Law Amendment Act, 1925, or in a trial by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, shall, without the permission of the Commissioners, or of the Special Magistrate, as the case may be, or of the ¹[Provincial Government], be published in any newspaper, news-sheet, pamphlet, leaflet or other document."

7. In sub-section (1) of section 4 of the Indian Press Amendment of (Emergency Powers) Act, 1931, after clause (i), the following section 4 of words and clauses shall be inserted, namely :— Act XXIII of 1931.

"or which

- (j) give any information in contravention of a notification published under section 2A, or
- (k) disclose the identity of any witness in contravention of the provisions of section 2B."

8. In sub-section (1) of section 4 of the Indian Press Amendment of (Emergency Powers) Act, 1931, before *Explanation 1* the section 4 of following proviso shall be inserted, namely :— Act XXIII of 1931.

" Provided that no such declaration shall be made in a case to which clause (j) applies unless the keeper of the printing-press has had an opportunity of showing cause why such declaration should be not made."

9 to 12. [Amendments incorporated]

Page 401—

Strike out sections 9 to 27, and insert the following note, namely :—
(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

¹See foot-note 1 on p. 400, ante.

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Bengal Act VIII of 1934.

[THE PRESIDENCY SMALL CAUSE COURTS (BENGAL AMENDMENT) ACT, 1934.]¹

(26th April 1934.)

An Act further to amend the Presidency Small Cause Courts Act, 1882.

XV of
1882.

WHEREAS it is expedient further to amend the Presidency Small Cause Courts Act, 1882, in its application to the Court of Small Causes of Calcutta, in the manner hereinafter appearing ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10
Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Presidency Small Cause Courts (Bengal Amendment) Act, 1934.

Short title.

2. The Presidency Small Cause Courts Act, 1882 (hereinafter referred to as the said Act) shall, in its application to the Court of Small Causes of Calcutta, be amended in the manner hereinafter provided.

Application of
Act.

3. After section 72A of the said Act the following sections shall be inserted, namely :—

Insertion of
new sections
72B and 72C in
Act XV of 1882.

“72B. A fee of two annas when the amount or value of the subject-matter of the suit or the amount of the decree does not exceed fifty rupees, and a fee of twelve annas in any other case, shall be paid on every application mentioned in the fifth schedule hereto annexed in all suits or other proceedings under this Act.

Fees for certain
applications.

Every such application shall be in writing and no such applications shall be received until such fee has been paid:

Provided that an application referred to in item 15 of the said schedule may be received without payment of such fee but notice shall not be issued until the fee has been paid.

Explanation.—For the purposes of this section ‘suit’ includes a proceedings under Chapter VII.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1933, Pt. IV, p. 160 ; and for report of the Select Committee, see *ibid*, 1934, Pt. IV, p. 124 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XLII, No. 1, p. 146 and *ibid* Vol. XLIII, No. 1, p. 100 ; and *ibid* No. 4, p. 319.

**404 The Presidency Small Cause Courts (Bengal Amendment)
Act, 1934.**

[Ben. Act VIII]

(Secs. 4, 5.)

**Fees for
applications
under section
38.**

72C. A fee amounting to one-half of the fee payable on the plaint in a suit for the amount or value of the relief claimed in the application, including the value of any relief claimed in respect of costs, shall be paid on every application made under section 38 on which the Court orders that notice be issued on the opposite party, and such notice shall not be issued until such fee has been paid :

Provided that where a new trial is ordered to be held in respect of the whole of the subject-matter of the suit the Court may direct that such fee be repaid, in whole or in part, to the party by whom it has been paid."

**Substitution
of new section
for section 73.**

4. For section 73 of the said Act the following section shall be substituted, namely :—

**Repayment of
half fees on
settlement
before hearing.**

"73. Whenever any suit, or any proceeding under Chapter VII, is settled by agreement of the parties before the hearing half the amount of all fees paid to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid, provided that—

(a) the fact of such settlement is communicated, by a petition signed by the parties or their agents, to the Court before or within twenty-one days after the expiry of the period fixed by the Court or the Registrar for entering appearance, or, in the case of a proceeding under Chapter VII, before or within twenty-one days after the day appointed for showing cause, and

(b) application for the repayment is made within twelve months after the date of such petition or within such further period, if any, as the Chief Judge, for reasons to be recorded in writing, may allow."

**Addition of a
new schedule."**

* 5. After the fourth schedule to the said Act the following schedule shall be added, namely :—

"THE FIFTH SCHEDULE.

[See section 72B.]

Applications—

(1) for leave to sue,

(2) for leave to sue as a pauper,

(3) for amendment of the pleadings except for a slight amendment of the cause-title only,

(4) for appointment of a guardian *ad litem* for a minor defendant or opposite party,

The Presidency Small Cause Courts (Bengal Amendment) Act, 1934. 405

of 1934.]

(Sec. 5.)

- (5) for substitution of the successor of a deceased party or of the transferee of a party,
- (6) for issue of a commission, to examine a witness or to hold a local inspection,
- (7) for an account to be taken by the Court accountant or by any other person,
- (8) for payment of a decretal debt by instalments, except applications made on the day on which the decree is passed,
- (9) for execution of a decree or order,
- (10) complaining against resistance to attachment,
- (11) claiming attached property,
- (12) by the decree-holder for permission to bid at a sale
- (13) for permission to draw money, from Court—
 - (a) without production, by the plaintiff, of the plaint-receipt granted to him or without production, by the defendant, of the summons served on him,
 - (b) on the day the money is deposited in Court,
- (14) by a third party for permission to take certified copy of proceedings,
- (15) for purposes other than those specified above, on which the Court orders that notice be issued on the opposite party."

Bengal Act X of 1934.

(THE BENGAL NURSES ACT, 1934.)

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Bengal Act X of 1934.

(THE BENGAL NURSES ACT, 1934.)¹

(3rd May 1934.)

An Act to provide for the registration and better training of nurses, midwives and health visitors in Bengal.

WHEREAS it is expedient to provide for the registration of nurses, midwives and health visitors in Bengal and to secure their better training ;

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

5 & 6 Geo.
V, c. 61,
6 & 7 Geo.
V, c. 37 ;
9 & 10
Geo.
V, c. 101.

Preliminary.

1. (1) This Act may be called the Bengal Nurses Act, 1934.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such ²date as the ³[Provincial Government] may, by notification, direct.

Short title,
local extent
and
commencement.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(a) "the Council" means the Council established under section 3 ;

(b) "notification" means a notification published in the ⁴[*Official Gazette*] ;

(c) "prescribed" means prescribed by rules or regulations made under this Act ; and

(d) "register" means a register maintained under section 14, and "registered" means registered under the provisions of this Act.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1933, Pt. IV, p. 175 ; and for report of the Select Committee, see *ibid*, 1934, Pt. IV, p. 129 ; and for proceedings in Council, see the proceedings of the Bengal Legislative Council, Vol. XLII, No. 3, p. 59 and *ibid* Vol. XLIII, No. 1, p. 94 and *ibid* No. 4, p. 327.

²The Act came into force on the 13th February, 1936—vide Notification No. 521 Medl., dated the 8th February, 1936, published in the *Calcutta Gazette*, dated the 13th February, 1936, Pt. I, p. 348.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*", *ibid*.

(Secs. 3, 4.)

*Constitutions of the Council.*Establishment
and
Incorporation
of the Council.Constitution
of the Council.

3. The ¹[Provincial Government] may, by notification, establish a Council, to be called "The Bengal Nursing Council" for the purpose of carrying out the provisions of this Act; and such council shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

4. The Council shall consist of the following seventeen members, namely:—

(a) a President to be appointed by the ¹[Provincial Government];

Page 410—

In section 4,—

(a) for clause (a), substitute the following clause, namely:—
Services West Bengal....who

After clause (b) of section 4, insert the following clause,
namely:—

"(c) the Superintendent of Nursing Services, West Bengal—*Ex-officio*."

ions",

III of

[Inserted by West Bengal Act XII of 1951, section 2.)

[No. 48, dated the 1st April, 1952.]

Hospital, Calcutta;

(j) the Lady Superintendent of Nursing,
Sambhunath Pandit Hospital, Calcutta;

(k) one person to be elected by the Bengal Council of Medical Registration from among their own members;

(l) one person to be elected by the Governing Body of the State Medical Faculty of Bengal from among their own members;

(m) one registered nurse, one registered midwife and one registered health visitor to be elected by the registered nurses, midwives, and health visitors, respectively; and

(n) two persons to be appointed by the ¹[Provincial Government] of whom at least one shall be appointed to represent institutions for the training of nurses, midwives and health visitors:

¹See foot-note 3 on p. 409, ante.

In section 4, after the proviso, add the following proviso, namely:—

“Provided further that no person shall be entitled to vote at the election of a person to be a member of the Council under clause (k), clause (l) or clause (m) or to be elected as such a member unless he

(i) is a citizen of India; and

(ii) resides, or carries on his profession or is employed in West Bengal.”

Added by West Ben. Act XXI of 1950, section 2.)

[No. 45, dated the 2nd December, 1950.]

(k), (l) and (m) of section 4 does not, by such date as may be fixed by the ¹[Provincial Government], elect a person to be a member of the Council, the ¹[Provincial Government] shall, by notification, appoint to the vacancy a person qualified for election thereto; and any person so appointed shall be deemed to be a member of the Council as if he had been duly elected by that body.

includes Appointment of members in default of election.

6. The name of every member appointed or elected under section 4 or section 5 shall be published by the ¹[Provincial Government] in the ²[Official Gazette].

Publication of names of members.

7. The Council may permit any member to absent himself from meetings of the Council for any period not exceeding six months.

Leave of absence to members.

8. (1) An appointed or elected member of the Council shall be deemed to have vacated his seat—

Cessation of membership.

(a) if he is absent without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council;

(b) if he is absent out of India for any period exceeding six consecutive months.

(2) On the occurrence of any vacancy referred to in sub-section (1), the President of the Council shall forthwith report the fact of such vacancy to the ¹[Provincial Government], who shall thereupon, by notification, declare the seat to be vacant.

9. If any member dies or resigns his membership or ceases to be a member as provided in sub-section (1) of section 8, the vacancy shall be filled within one month of the notification of the vacancy by a fresh appointment or election, as the case may be, under section 4:

Filling of casual vacancies.

¹See foot-note 3 on p. 409, ante.

²See foot-note 4 on p. 409, ante.

(Secs. 10, 11.)

Provided that if any such casual election is not held within the said period, or if at any such election no member is elected, the ¹[Provincial Government] shall, by notification, appoint to the vacancy a person qualified for election thereto.

Provided also that any person appointed or elected to fill a casual vacancy shall hold office only so long as the member in whose place the appointment or election is made would have held office.

Term of
office of
members.

10. (1) Subject to the provisions of sub-section (1) of section 8, and section 9, the term of office of members other than *ex officio* members shall be three years.

(2) Any member shall be eligible for re-appointment or re-election at the end of his term of office.

(3) The powers of the Council may be exercised notwithstanding any vacancy in the number of its members fixed by section 4.

Business of the Council and Committees.

Meetings
of the Council
and
constitution of
committees.

11. (1) The Council shall make regulations to regulate—

- (a) the mode of transaction of business, including provision for decisions on emergent matters by the circulation of papers to members, and for co-opting persons specially qualified to advise on any particular matter before the Council;
- (b) the times and places at which its meeting shall be held;
- (c) the issue of notices convening such meetings;
- (d) the conduct of business thereat; and
- (e) the constitution of committees, the delegation to such committees of any powers or duties of the Council under this Act and the procedure of the committees (including quorum) in the transaction of business:

Provided that—

- (i) no business shall be transacted at any meeting of the Council unless a quorum of eight members be present; and
- (ii) save as provided in section 20, all questions arising at any meeting of the Council shall be decided by the votes of the majority of the members

¹See foot-note 3 on p. 409, ante.

of 1934.]

(Secs 12—14.)

present and voting or in case of an equality of votes, by the casting vote of the President of the Council or in his absence of the member presiding at the meeting.

(2) Until such time as the regulations referred to in sub-section (1) have come into operation, it shall be lawful for the President of the Council to summon a meeting at such time and place as to him seem expedient, by letter addressed to each member.

12. There shall be paid to the members of the Council such fees, if any, for attendance at meetings of the Council or of committees of the Council and such reasonable travelling expenses for attending such meetings or for inspecting institutions as may from time to time be allowed by the Council and approved by the ¹[Provincial Government.]

Payment of fees and travelling expenses to members

Establishment

13. (1) With the previous sanction of the ¹[Provincial Government], the Council—

Registrar and office staff of the Council.

(a) shall appoint a Registrar,

(b) may grant leave to such Registrar and appoint a person to act in his place, and

(c) shall pay to the Registrar and to the person (if any) appointed to act in his place such salary or remuneration and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as it may consider necessary for the purposes of this Act, and shall pay them such salary or remuneration and such allowances (if any) as the Council may determine.

(3) The Registrar shall act as Secretary and Treasurer to the Council.

The registers of registered nurses, midwives and health visitors.

14. (1) The Council shall, as soon as conveniently may be after the commencement of this Act and from time to time as occasion may require, make orders for regulating the maintenance of a register of registered nurses, a register of registered midwives and a register or registered health visitors in several parts in which the persons to be registered shall be classified according to qualifications.

Orders by the Council for maintenance of registers of registered nurses, midwives and health visitors.

(2) The said registers shall be kept in such form as may be prescribed.

¹See foot-note 3 on p. 409, *ante*.

(Secs. 15—18.)

Maintenance
of the registers
by the
Registrar.

15. (1) The Registrar shall keep the registers in accordance with the provisions of this Act and of any orders made by the Council, and shall, from time to time, make all necessary alterations in the registered addresses or appointments and in the classification, of the registered nurses, midwives and health visitors and erase the name of any such nurse, midwife or health visitor who is dead.

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1) he may send through the post a letter to any person registered as a nurse, a midwife or a health visitor addressed to him according to his registered address or appointment, to inquire whether he has ceased to practise or whether his residence or appointment has been changed; and if no answer to any such letter is received within a period of six months from its despatch, the Registrar may erase the name of such person from the register in which it is entered:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

Erasure of
names from
registers on
notice of death.

16. (1) Every Registrar of Deaths who receives notice of the death of any person whose name he knows to be entered in one of the registers, shall forthwith transmit by post to the Registrar of the Council a certificate of such death signed by him and stating particulars of the time and place of death.

(2) On receipt of—

(a) any such certificate, or

(b) any other reliable information regarding such death, the Registrar of the Council shall erase the name of the deceased person from the register in which it is entered.

Erasure of
fraudulent
and incorrect
entries in
registers.

17. Any entry in the registers, which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased under an order of the Council.

Persons
entitled to
be registered

18. The following persons shall, on payment of such fee as may be prescribed, be entitled to registration under this Act, namely:—

(a) nurses, midwives and health visitors who have undergone the courses of training, have passed the examinations and fulfil such further conditions as may be prescribed;

(b) nurses, midwives and health visitors who are already in practice at the commencement of this Act and are not entitled to registration under clause (a), subject to such conditions and restrictions as may be prescribed:

of 1934.]

(Secs. 19, 20.)

Provided that nurses and midwives who at the commencement of this Act are enrolled on the registers maintained by the State Medical Faculty of Bengal shall be entitled to have their names transferred according to their qualifications to the appropriate parts of the respective registers to be maintained under this Act without being required to undergo further training and examination and without being required to pay fees.

Page 415— ~~MAKING an application in the prescribed form~~ Admission to register of ~~the fee~~

In section 19 for the words "any part of His Majesty's dominions outside Bengal" substitute the words "any part of India outside West Bengal or any part of His Majesty's dominions".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

by kind having the force of law,
providing for the registration of nurses, midwives and health visitors under some public authority ;

(b) that persons registered under this Act are admitted to the register established under the said enactment or provision on terms not less favourable than those contained in this section ;

(c) that the standard of training and examination required for admission to the register of nurses, midwives or health visitors established under the said enactment or provision is not lower than the standard of training and examination required under this Act :

Provided that, notwithstanding any regulation made under clause (c) of sub-section (1) of section 32, no fee shall be chargeable for the registration under this section of a nurse, midwife or health visitor whose name has been registered in a province in India between the Government of which and the [Provincial Government] the principle of reciprocity of registration has been accepted.

20. (1) The Council may refuse to permit the registration of any person as a nurse, midwife or health visitor when he is registered as a nurse, midwife or health visitor may direct the temporary or final removal of his name from the register of nurses, midwives or health visitors on any of the following grounds :—

Refusal of registration, removal and re-entry of names.

(a) that he has been sentenced by any Court for any non-bailable offence, the sentence not having been subsequently reversed or quashed, and his

¹See foot-note 3 on p. 409, ante.

(Secs. 21, 22.)

disqualification on account of such sentence not having been removed by an order which the ¹[Provincial Government] is hereby empowered to make, if it thinks fit, in this behalf ;

- (b) that he has been guilty of any offence which in the opinion of the Council indicates professional incompetence, negligence, or contravention of regulations ordinarily included in the performance of the duties of nurses, midwives or health visitors ;
- (c) that there are defects in his character which in the opinion of the Council would render the entry or retention of his name on the register undesirable :

Provided that no action shall be taken by the Council under this section until after due inquiry (at which the person concerned has been given an opportunity to be heard in his defence and to appear either in person or by counsel, *vakil*, pleader or attorney, and which at the discretion of the President of the Council may be held *in camera*) he has been found, by a majority of two-thirds of the members present and voting at the meeting, to have been sentenced for any non-bailable offence specified in clause (a) or to have been guilty of an offence, or to have defects in his character, of the nature specified in clause (b) or clause (c).

(2) Any name so removed may afterwards be re-entered in the register and any order of refusal of registration passed under sub-section (1) may be withdrawn under the direction of the Council given by a majority of two-thirds of the members present and voting at the meeting.

Appeal from
order under
section 20.

21. Any person aggrieved by an order of the Council made under section 20 may, within three months from the date on which notice of such order is given to him, appeal to the ¹[Provincial Government] against such order ; and the decision of the ¹[Provincial Government] on such appeal shall be final.

Registration
under this
Act not to
qualify for
registration
under the
Bengal Medical
Act, 1914.

22. The certificate of registration under this Act shall not confer upon any person any right or title to be registered under the Bengal Medical Act, 1914, or to assume any title name or designation implying that he is by law recognised as a medical practitioner, or that he is authorised to grant any medical certificate, or any certificate of death or still-birth, or to undertake the charge of cases of abnormality or disease in connection with parturition.

Ben. Act
VI of 1914.

¹See foot-note 3 on p. 409, *ante*.

of 1934.]

(Secs. 23—27.)

23. (1) Institutions that are approved and recognised by the Council after inspection by its representative shall be competent to train nurses, midwives or health visitors and to send them up for examinations for the qualifying certificates of the Council.

Institutions for training nurses, midwives and health visitors to be recognised by Council.

(2) The Council may withdraw recognition from any such institution after its inspection by a representative of the Council.

24. Any person aggrieved by the refusal of the Council to approve and recognise any institution as competent to train nurses, midwives or health visitors, may, within three months from the date of such refusal, appeal to the ¹[Provincial Government] against such order of refusal. The decision of the ¹[Provincial Government] on such appeal shall be final.

Appeal against refusal to recognise training institutions.

25. No hospital, school or other similar institution which has not been approved or recognised under sub-section (1) of section 23 shall issue to any person a certificate or enter the name of any person on a list, register or other document purporting to show that such person is qualified by having passed any examination or undergone any course of training to practise as a nurse, midwife or health visitor unless such person has been registered under this Act.

Prohibition of issue of certificates and entry of names by unrecognised institutions.

26. (1) The ¹[Provincial Government] may by notification appoint in every district a Supervising Board consisting of such members as may be specified therein to exercise subject to prescribed conditions and restrictions general supervision over nurses, midwives and health visitors within such district and to exercise and perform such other powers and duties as may be prescribed.

Supervising Board.

(2) Until a Supervising Board is appointed under sub-section (1) the Civil Surgeon of the district in consultation with the local authorities shall, subject to prescribed conditions and restrictions, exercise general supervision over nurses, midwives and health visitors within the district and exercise and perform such other powers and duties as may be prescribed.

27. After the expiration of five years from the commencement of this Act no dispensary, hospital, infirmary or lying-in hospital which is supported partially or entirely by public funds or local funds shall employ any person as a nurse, midwife or health visitor unless he is registered under this Act or is under training in an institution recognised by the Council :

Disabilities of unregistered persons.

¹See foot-note 3 on p. 409, ante.

(Secs. 28—30.)

Provided that the ¹[Provincial Government] may exempt for such period and on such terms as it may fix any such dispensary, hospital, infirmary or lying-in hospital from the operation of this section.

Penalties.

Penalty for dishonest use of certificate, procuring registration by false means, and falsification of register or certificate.

28. Any person who—

- (a) dishonestly makes use of any certificate of registration issued under the provisions of this Act to him or to any other person,
- (b) procures or attempts to procure registration under the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent declaration, certificate or representation, whether in writing or otherwise, or
- (c) wilfully makes or causes to be made any falsification in the registers maintained or the certificates issued under the provisions of this Act, or
- (d) being the Secretary, Manager or other officer of a hospital, school or other similar institution issues, or authorises the issue of, a certificate to any person or enters, or authorises the entry of, the name of such person in contravention of section 25,

shall be punished with fine which may extend to three hundred rupees.

Penalty for unlawful assumption of title of registered nurse, registered midwife or registered health visitor.

29. Any person who, not being a nurse, midwife or health visitor registered under this Act, assumes or uses the name or title of registered nurse, registered midwife, or registered health visitor, or uses any name, title, addition, description, or sign-board, implying that such person is a registered nurse, a registered midwife or a registered health visitor, as the case may be, shall be punished with fine not exceeding one hundred rupees in the case of a first offence, and with fine not exceeding three hundred rupees in the case of a second or any subsequent offence.

Disposal of fees.

Disposal of fees.

30. All fees and other moneys received by the Council under this Act shall be applied for the purposes of this Act in such manner as may be prescribed.

¹See foot-note 3 on p. 409, *ante*.

of 1934.]

(Secs. 31, 32.)

Annual list of names.

31. (1) The Registrar shall, in every year, on or before a date to be fixed in this behalf by the Council, cause to be printed and published correct lists of the names for the time being entered in the several parts of the registers of registered nurses, midwives and health visitors, setting forth—

Publication and use of annual list of registered nurses, midwives and health visitors.

- (a) all names entered in the several parts of the respective registers, arranged in alphabetical order according to surnames ;
- (b) the registered address or appointment of each person whose name is so entered in the registers ; and
- (c) the registered qualification of each such person and the date on which such qualification was certified.

(2) Every Court shall presume that any person whose name is entered in the latest of such lists is duly registered under this Act, and that any person whose name is not so entered is not registered under this Act :

Provided that, in the case of any person whose name does not appear in such printed lists, a certified copy, signed by the Registrar, of the entry of the name of such person in a register of nurses, midwives or health visitors, shall be evidence that such person is registered under this Act :

Provided also that a certificate purporting to be signed by the Registrar stating that the name of a person borne on the printed register of nurses, midwives or health visitors, as the case may be, has been removed from such register and specifying the date of such removal shall be evidence that such person is not registered under this Act and of the date from which he ceased to be so registered.

Regulations and rules.

32. (1) In addition to the power conferred by section 11, the Council may, with the previous sanction of the ¹[Provincial Government], make regulations—

Regulations by the Council.

- (a) for regulating the courses of training for nurses, midwives and health visitors, the recognition of institutions competent to undertake such training, the conduct of examinations of trained nurses, midwives and health visitors and the remuneration, if any, of examiners ;

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 33.)

- (b) for regulating the issue of certificates, the maintenance of registers and the conditions and restrictions of admission thereto under section 18 and for prescribing the form of application for such admission ;
- (c) for prescribing the fees for admission to examination, for registration and for the re-entry of names erased or removed from the registers ;
- (d) for regulating the publication of the lists of registered nurses, midwives and health visitors ;
- (e) for regulating the payment of fees and travelling expenses to members under section 12 ;
- (f) for regulating the expenditure of the Council and providing for the audit of their accounts.

(2) All such regulations shall be published in the ¹[*Official Gazette*].

Rules by the
Provincial
Government.

33. (1) The ²[Provincial Government] may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ²[Provincial Government] may make rules—

- (a) to regulate elections under clauses (k), (l) and (m) of section 4 and to ensure that the term of office of all members elected at the first constitution or any re-constitution of the Council should begin on the same date;
- (b) to prescribe the qualifications of candidates for employment as Registrar ;
- (c) to prescribe the form of the registers of registered nurses, midwives and health visitors to be maintained under section 14 ;
- (d) to regulate, supervise and restrict within due limits the practice of registered nurses, midwives and health visitors;
- (e) to regulate the procedure to be followed by the council—
 - (i) in conducting an inquiry referred to in the proviso to section 20 ;
 - (ii) in making a re-entry in the registers of nurses, midwives and health visitors of

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 1 on p. 419, *ante*.

of 1934.]

(Secs. 34—38.)

the names of persons removed from the respective registers and in withdrawing an order of refusal of registration passed on a nurse, midwife or health visitor ; and

(iii) in disposing of appeals from the decisions of the Council preferred under sections 21 and 24 ;

(f) to regulate the inspection of, and the manner of keeping registers of, institutions referred to in section 23 ;

(g) to prescribe the powers and duties of, and the conditions and restrictions of general supervision by the Supervising Boards and Civil Surgeons under section 26 ; and

(h) to regulate the application of fees levied under this Act and of other moneys received by the Council for the purposes of this Act.

(3) All such rules shall be published in the ¹[*Official Gazette*].

Miscellaneous.

Act XLV of 1860. 34. Every person appointed under sub-section (1) or sub-section (2) of section 13 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. Certain persons to be public servants.

35. No suit or other legal proceeding shall lie against any person for anything done or intended to be done in good faith under this Act. Protection to persons acting in good faith.

36. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act. Offences triable by a Presidency Magistrate or a Magistrate of the first class.

37. No Magistrate shall take cognizance of any offence punishable under this Act except upon complaint made by order of the ²[Provincial Government], or upon complaint made, with the previous sanction of the ²[Provincial Government], by the Council. Cognizance of offences.

Ben. Act VI of 1914. 38. Nothing in this Act shall apply to medical practitioners possessing qualifications entitling them to registration under the Bengal Medical Act, 1914. Act not to apply to medical practitioners.

¹See foot-note 1 on p. 420, *ante*.

²See foot-note 1 on p. 419, *ante*.

Bengal Act XII of 1934.

(THE BENGAL WATERWAYS ACT, 1934.)

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Bengal Act XII of 1934.

(THE BENGAL WATERWAYS ACT, 1934.)¹



(21st June 1934.)

An Act to provide for the maintenance and improvement of waterways in Bengal.

WHEREAS it is expedient to make better provision for the maintenance and improvement of waterways in Bengal for purposes of navigation ;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act ;

5 & 6 Geo. V, c. 61 ; 6 & 7 Geo. V, c. 37 ; 9 & 10 Geo. V, c. 101. AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Waterways Act, 1934. Short title, commencement and extent.

(2) It shall come into force on such date as the ²[Provincial Government] may, by notification, appoint.

(3) It extends to the whole of Bengal.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “ Board ” means the Bengal Waterways Board constituted under this Act ;

(b) “ Chairman ” means the Chairman of the Board ;

(c) “ channel ” includes any river, *beel*, *khal*, *nulla* or waterway, whether natural or artificial ;

(d) “ District Board ” means a District Board constituted under the Bengal Local Self-Government Act of 1885 ;

Ben. Act..
III of
1885.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1933, Pt. IV, p. 135 ; and for report of the Select Committee, see *ibid.*, 1934, Pt. IV, p. 28 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLII, No. 1, p. 282, and *ibid.*, Vol. XLIII, No. 2, pages 168, 187, 235 and 284 and *ibid.*, No. 3 pages 28, 65 and 111.

²These words were substituted for the words “ Local Government ” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XII

(Chapter II.—The Bengal Waterways Board.—Sec. 3.)

- (e) "district member" means a person elected under section 11 by a district committee to represent the district committee on the Board;
- (f) "goods" includes wares and merchandise of every description;
- (g) "line of navigation" means any navigable channel subject to the provisions of this Act or of the Canals Act, 1864;
- (h) "Local Board" means a Local Board constituted under the Bengal Local Self-Government Act of 1885; Ben. Act V of 1864.
- (i) "navigable channel" means any channel which is navigable during the whole or a part of the year by a vessel of two-foot draught or over; Ben. Act III of 1885.
- (j) "notification" means a notification published in the [Official Gazette];
- (k) "owner" of a vessel includes a company owning the vessel, and also includes the managing director or principal officer of such company and the principal servant of an owner, who are resident in Bengal;
- (l) "Port Commissioners" means the Commissioners for the Port of Calcutta, constituted under the Calcutta Port Act, 1890; Ben. Act IX of 1890.
- (m) "steam vessel" means every description of vessel propelled, wholly or in part, by mechanical power;
- (n) "Union Board" means a Union Board established under the Bengal Village Self-Government Act, 1919; and Ben. Act V of 1919.
- (o) "vessel" includes any raft or craft, timber, bamboos or floating materials, propelled in any manner.

CHAPTER II.

THE BENGAL WATERWAYS BOARD.

*Constitution of the Board.***Creation and incorporation of the Board.**

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a Board, to be called "The Bengal Waterways Board"; and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter II.—The Bengal Waterways Board.—Secs. 4—8.)

4. The Board shall consist of twelve Trustees and of such district members, not exceeding three in number, as may from time to time be elected under section 11. Constitution of the Board.

5. The twelve Trustees shall be—

Appointment of Trustees.

- (a) a Chairman ;
- (b) the Chairman of the Port Commissioners or a person appointed under section 7 ;
- (c) a member of the Bengal Chamber of Commerce ;
- (d) two members of such bodies as may be nominated from time to time by the ¹[Provincial Government] as representing the interests of the Indian Mercantile Community ;
- (e) two members of the Bengal Legislative ²[Assembly] ;
- (f) two representatives of the District Boards ;
- (g) three persons to be appointed by the ¹[Provincial Government], of whom not more than one shall be appointed to represent the interests of persons carrying on the business of transport by water within the jurisdiction of the Board.

6. The first Chairman shall be appointed by the ¹[Provincial Government] by notification and subsequent Chairmen shall be appointed by the ¹[Provincial Government] after consultation with the Board : The Chairman.

Provided that when the ¹[Provincial Government] appoints an official, he shall be an officer drawing a salary of not less than one thousand five hundred rupees a month.

7. The Chairman of the Port Commissioners shall be a Trustee *ex-officio*. With the consent of the Port Commissioners, he may appoint another person in his place to perform his duties as a Trustee. The Chairman of the Port Commissioners.

8. (1) The member of the Bengal Chamber of Commerce referred to in clause (c) of section 5 shall be elected by that Chamber. Election of other Trustees.

(2) The members referred to in clause (d) of section 5 shall be elected by the bodies mentioned therein.

(3) The members of the Bengal Legislative ²[Assembly] referred to in clause (e) of section 5 shall be elected by ballot by the members of the Bengal Legislative ²[Assembly].

¹See foot-note 2 on p. 429, *ante*.

²This word was substituted for the word " Council " by Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter II.—The Bengal Waterways Board.—Secs. 9, 10.)

(4) The representatives of the District Boards referred to in clause (f) of section 5 shall be elected by the District Boards.

(5) The Secretary to the Bengal Chamber of Commerce, the Secretary to the Bengal Legislative ¹[Assembly], an officer appointed in this behalf by the bodies referred to in clause (d) of section 5 and, in the case of the District Boards, an officer appointed in this behalf by the ²[Provincial Government], shall respectively make a return, in duplicate, to the Chairman or, if there is no Chairman, to the ²[Provincial Government], setting forth the name in full of every person elected under this section; and the said return shall be published by notification under the signature of the Chairman or, if there is no Chairman, shall be published by notification by the ²[Provincial Government].

(6) The election under sub-section (1), sub-section (2) and sub-section (4) shall be regulated by rules made under section 129.

First elections.

9. Notwithstanding anything contained in this Act the ²[Provincial Government] may issue such orders as it may consider necessary to enable the first elections referred to in sub-section (1), sub-section (2) and sub-section (4) of section 8 to be held after the commencement of this Act and in regard to any matter incidental and ancillary thereto.

Appointment in default of election.

10. (1) If any of the bodies of electors referred to in section 8 does not, by such date as may be prescribed by rule made in that behalf under section 129, elect a person to be a Trustee, the ²[Provincial Government] shall, by notification, appoint—

- (a) a person belonging to such body, or
- (b) where such body is the Bengal Legislative ¹[Assembly] and the said ¹[Assembly] has been dissolved, such person as it thinks fit to be a Trustee.

(2) Notwithstanding anything contained in sub-section (1), if a person cannot be elected under sub-section (3) of section 8 by the prescribed date by reason of the fact that the Bengal Legislative ¹[Assembly] is not in session or has been dissolved the election shall be held during the next session, and the ²[Provincial Government] may, by notification, appoint a member of the said ¹[Assembly], or, if the ¹[Assembly] has been dissolved, such person as it thinks fit, to be a Trustee for the intervening period.

(3) A person appointed under this section shall be deemed to be a Trustee as if he had been duly elected under section 8.

¹See foot-note 2 on p. 431, ante.

²See foot-note 2 on p. 429, ante.

of 1934.]

(Chapter II.—The Bengal Waterways Board.—Secs. 11, 12.)

11. A district member shall be elected by a district committee to represent the committee on the Board for the consideration of a district scheme or for the consideration under proviso (c) to section 68 of a major work other than a district scheme:

Election of a district member by a district committee.

Provided that if more than three districts are concerned in one and the same district scheme, the Chairman shall decide which three districts shall elect district members for the purpose of such scheme.

12. (1) A person shall be disqualified for being appointed or elected a Trustee or a district member if he—

Disqualifications for being appointed or elected a Trustee or district member.

- (a) has been convicted by any Court for any non-bailable offence or any offence which, in the opinion of the ¹[Provincial Government], involves moral turpitude, provided that such conviction is not subsequently reversed or set aside, or such disqualification is not removed by an order which the ¹[Provincial Government] is hereby empowered to make in this behalf if it thinks fit; or
- (b) is of unsound mind; or
- (c) is an undischarged insolvent; or
- (d) holds any office or place of profit under the Board; or
- (e) has, directly or indirectly, by himself or by any partner, employer or employee, any share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board; or
- (f) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest on such contract or employment as aforesaid, by reason only of his having a share or interest in—

- (i) any sale, purchase, lease or exchange of land, or any agreement for the same; or
- (ii) any agreement for the loan of money, or any security for the payment of money only; or

¹See foot-note 2 on p. 429, ante.

[Ben. Act XI]

{Chapter II.—The Bengal Waterways Board.—Secs. 13—15.}

- (iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted ; or
- (iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades ;

or by reason only of his having a share or interest, otherwise than as a director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board.

(3) Notwithstanding anything contained in sub-section (1), a person appointed under clause (g) of section 5 to represent the interests of persons carrying on the business of transport by water shall not be disqualified as aforesaid by reason only of his carrying on such business or being a director or salaried officer of any company carrying on such business.

The Chairman of the Board.

**Term of
appointment of
the Chairman.**

13. The Chairman shall be appointed for a term of three years, and may be re-appointed for a further term or terms each not exceeding two years.

**Remuneration of
Chairman.**

14. (1) The Chairman shall receive such pay not exceeding two thousand five hundred rupees *per mensem* as may be fixed by the ¹[Provincial Government].

²(2) The word “pay”, as used in this section, does not include any contribution payable on account of a Chairman who is a servant of the Crown under the rules regulating his transfer to foreign service.

(3) The ¹[Provincial Government] may, if it thinks fit, direct the payment to the Chairman of a house-rent allowance, not exceeding two hundred rupees *per mensem*, in addition to his pay, and shall determine on what scale and subject to what conditions he may draw travelling allowance.

**The Chairman
to be a whole-
time officer.**

15. While any person is holding the office of Chairman for which he receives pay he shall not hold any other salaried office, and, subject to any exceptions, permitted by the ¹[Provincial Government], shall devote his whole time and attention to his duties under this Act.

¹See foot-note 2 on p. 429, *ante*.

²Sub-section (2) was substituted for the original sub-section (2) by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter II.—The Bengal Waterways Board.—
Secs. 16—20.)

16. Notwithstanding anything contained in this Act, the ¹[Provincial Government] may, if it thinks fit, appoint a person to be Chairman without pay for one or more periods each not exceeding one year.

Appointment of unpaid Chair-

17. (1) The ¹[Provincial Government] may, after consultation with the Board, grant leave of absence to the Chairman, or depute him to other duties, for such period as it thinks fit.

Leave of absence or deputation of the Chairman.

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his pay, as may be fixed by the ¹[Provincial Government]:

Provided that, if the Chairman is ²[a servant of the Crown], the amount of such allowance shall be such as he may be entitled to ³[under the conditions of his service under the Crown regulating his transfer to foreign service].

18. (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the ¹[Provincial Government] may appoint a person to act as Chairman.

Appointment, etc., of acting Chairman.

(2) The pay and house-rent allowance or any other allowance (if any) of any person appointed to act as Chairman shall be fixed by the ¹[Provincial Government], subject to the provisions of sections 14 and 16.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman, and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

19. If at any time it appears to the ¹[Provincial Government] that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Removal of the Chairman.

The Trustees.

20. The Board may permit any Trustee, other than the Chairman, the Chairman of the Port Commissioners or a person appointed under section 7, to absent himself from meetings of the Board for any period not exceeding six months.

Leave of absence to other Trustees.

¹See foot-note 2 on. p. 429, *ante*.

²These words were substituted for the words "a Government officer" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "under any general or special orders of the Government for regulating the transfer of Government servants to foreign service", *ibid*.

(Chapter II.—The Bengal Waterways Board.—Secs. 21—23.)

Removal of Trustees.

21. (1) The ¹[Provincial Government] may, by notification, declare that any Trustee shall cease to be a Trustee—

- (a) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or
- (b) if he has, without the permission of the Board, been absent from three consecutive meetings of the Board.

(2) The ¹[Provincial Government] shall, by notification, declare that a Trustee shall cease to be a Trustee—

- (i) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 12 ; or
- (ii) if he was elected or appointed as being a member of the Bengal Legislative ²[Assembly], the Bengal Chamber of Commerce, a District Board or a body referred to in clause (d) of section 5 and if he is, at the date of such notification, no longer a member of such ²[Assembly], Chamber, Board or body, as the case may be ; or
- (iii) if he has acted in contravention of section 36.

Filling of casual vacancies in certain cases.

22. If any Trustee is permitted by the Board to absent himself from meetings of the Board for any period exceeding three months, or if any Trustee, other than the Chairman of the Port Commissioners, dies, or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification published under section 21, the vacancy shall be filled, within one month, by a fresh election or appointment under section 8 or section 10, as the case may be.

Term of office of Trustees.

23. (1) The term of office of the first Trustees elected or appointed under section 8 or section 10 shall commence on such day as may be appointed by the ¹[Provincial Government].

(2) Subject to the provisions of sub-section (2) of section 10 and section 21, the term of office of Trustees (other than the Chairman and the Chairman of the Port Commissioners) shall be as follows :—

- (a) a Trustee appointed or elected in pursuance of section 22 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee ;
- (b) other Trustees—three years.

¹See foot-note 2 on p. 429, ante.

²See foot-note 2 on p. 431, ante.

of 1934.]

(Chapter II.—The Bengal Waterways Board.—Secs. 24, 25.)

(3) Any Trustees shall, if not disqualified for any of the reasons mentioned in section 12, be eligible for re-appointment or re-election at the end of his term of office.

Officers and servants.

24. The Board shall from time to time determine—

Strength and remuneration of staff.

- (a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is directly charged to work) whom they consider it necessary and proper to employ for the purposes of this Act :

Provided that the engineering staff of the Board shall include a Chief Engineer and one or more Executive Engineers to be designated Waterways Executive Engineers,

- (b) the amount and nature of the pay, fees and allowances to be paid to each such officer and servant.

25. The Board shall from time to time make rules—

Board to make rules.

- (a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security;
- (b) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Board ; and
- (c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any ¹[servant of the Crown] in respect of whom a contribution is paid under section 136) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the Board :

Provided that a ²[servant of the Crown] employed as an officer or servant of the Board shall not be entitled to leave or leave allowances otherwise than as may be prescribed in ³[the conditions of his service under the Crown regulating his transfer to foreign service].

¹These words were substituted for the words "servant of the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Government servant". *ibid.*

³These words were substituted for the words "any general or special orders of the Government for regulating the transfer of Government servants to foreign service", *ibid.*

(Chapter II.—*The Bengal Waterways Board.*—Secs. 26—29.)

Powers of
appointment,
etc., in whom
vested.

26. Subject to any orders made by the Board under section 24 and any rules made under section 25, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct shall be vested—

(a) in the case of officers and servants holding posts the maximum monthly pay of which does not exceed one hundred and fifty rupees—in the Chairman, and

(b) in other cases—in the Board :

Provided that any officer or servant holding a post the maximum monthly pay of which exceeds fifty rupees, who is reduced, suspended or dismissed by the Chairman, may appeal to the Board, whose decision shall be final.

Provincial
Government to
sanction certain
posts, etc.

27. (a) The creation or abolition of any post the maximum monthly pay of which exceeds five hundred rupees,

(b) all rules made under clause (b), or clause (c) of section 25, and

(c) all orders passed by the Board under section 26 and relating to any officer appointed to hold a post the maximum monthly pay of which exceeds five hundred rupees, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the ¹[Provincial Government].

Control by
Chairman.

28. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board, and, subject to the provisions of this Act, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

Delegation of
certain of
Chairman's
functions.

29. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made thereunder, except those conferred or imposed upon or vested in him by sections 30, 32, 34, 39, 85, 101, 104, 108, 110 and 137:

Provided as follows:—

(a) the Chairman shall not delegate his power under section 26 to make appointments to any office the maximum monthly pay of which exceeds fifty rupees ;

¹See foot-note ² on p. 429, *ante*.

of 1932.]

(Chapter III.—Conduct of business.—Secs. 30—32.)

(b) the Chairman shall not delegate to any officer his power under section 26 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

CHAPTER III.

CONDUCT OF BUSINESS.

30. (1) An ordinary meeting of the Board shall be held at least once in every month.

Meetings of the Board.

(2) The Chairman may, whenever he thinks fit, and shall, upon the written request of not less than two other Trustees, call a special meeting.

31. Subject to the provisions of sections 11, 66, 68 and 72 district members shall be summoned, in accordance with rules made under section 129, to attend meetings of the Board at which district schemes are to be considered.

District members to be summoned to attend certain meetings of the Board.

32. (1) The Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause.

The Chairman to attend every meeting of the Board.

(2) No business shall be transacted at any meeting unless at least five Trustees other than the Chairman are present from the beginning to the end of the meeting :

Provided that if a quorum is not present within half an hour after the time appointed for a meeting, or at any time during a meeting, the meeting shall stand adjourned to some future day to be appointed by the Chairman. At such adjourned meeting or at any subsequent adjourned meeting at which the same business is to be transacted, the Chairman and two other Trustees present shall form a quorum.

(3) The person to preside at a meeting shall be the Chairman, or, in his absence from any meeting, the Trustees present shall choose one of their number to preside.

(Chapter III.—Conduct of business.—Secs. 33, 34.)

(4) All questions shall be decided by a majority of votes of the Trustees and district members, if any, present, the person presiding having a second or casting vote in all cases of equality of votes.

(5) If a poll be demanded, the names of the Trustees and district members voting, and the nature of their votes, shall be recorded by the person presiding.

(6) Minutes of the names of the Trustees and district members present, and of the proceedings, at each meeting shall be kept in a book to be provided for the purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting and shall be open to inspection by any Trustee or member of a district committee during office hours.

**Constitution
and
functions of
committees.**

33. (1) The Board may from time to time appoint committees, consisting of such persons of any of the following classes as they may think fit, namely :—

- (i) Trustees,
- (ii) members of district committees,
- (iii) other persons whose assistance or advice the Board may desire :

Provided that no committee shall consist of less than three persons.

(2) The Board may—

- (a) refer to such committees, for inquiry and report, any matter relating to any of the purposes of this Act, and
- (b) delegate to such committees, by specific resolution and subject to any rules made under section 129, any of the powers or duties of the Board.

(3) The Board may at any time dissolve, or, subject to the proviso to sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to them by the Board.

(5) All proceedings of any such committee shall be subject to confirmation by the Board.

**Meetings of
committees.**

34. (1) Committees appointed under section 33 may meet and adjourn as they think proper ; but the Chairman may, whenever he thinks fit, call a special meeting of any committee, and shall call a special meeting of any committee upon the written request of not less than two members thereof.

of 1934.]

(Chapter III.—Conduct of business.—Sec. 35.)

(2) The person to preside at a meeting of a committee shall be the Chairman, if he is a member of the committee, or, if he is not a member, the Board shall appoint a member of the committee to preside. If the Chairman or the person so appointed, as the case may be, is absent the members present shall choose one of their number to preside.

(3) No business shall be transacted at any meeting of a committee unless at least half the number of the members of the committee are present from the beginning to the end of the meeting.

(4) All questions at any meeting of a committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

35. (1) Subject to the provisions of sub-sections (2) and (3)—

Fees and travelling allowance for attendance at meetings.

(a) every Trustee, and every district member, attending a meeting of the Board shall be entitled to receive a fee of sixteen rupees, and every member of a committee appointed under section 33 shall be entitled to receive a fee of eight rupees, for each meeting of the Board or the committee—

- (i) at which business is transacted, and
- (ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee :

Provided that no ¹[servant of the Crown] shall be entitled to any fees for attending a meeting.

(b) Trustees, district members and members of committees appointed under section 33 shall be entitled to receive travelling allowance, in such cases and at such rates as may be prescribed by rules made under section 129, for attending meetings of the Board or of a committee.

(2) Neither the Chairman, if he be a whole-time paid officer, nor any officer or servant of the Board shall be entitled to receive any fee or travelling allowance under this section.

(3) The aggregate amount of fees and travelling allowance payable under this section to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by rules made under section 129.

¹See foot-note ² on p. 437, *ante*.

(Chapter III.—Conduct of business.—Secs. 36—39.)

Trustees and district members not to take part in proceedings of the Board in which they are personally interested.

36. (1) A Trustee or a district member who—

- (a) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 12 in respect of any matter, or
- (b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceeding of the Board relating to such matter.

Power to make and perform contracts.

37. The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

Execution of contracts and approval of estimates.

38. (1) Every estimate of expenditure shall be sanctioned and every contract shall be made on behalf of the Board by the Chairman or other officer of the Board in accordance with rules made under section 129 :

Provided that an estimate or contract for a project or for a work chargeable to a particular project, shall not be sanctioned or made without the approval of—

- (a) the Board, if such estimate or contract involves expenditure of more than ten thousand rupees,
- (b) the ¹[Provincial Government], if such estimate or contract involves expenditure of more than fifty thousand rupees :

Provided further that the total amount of such estimates sanctioned in respect of works chargeable to a particular project shall not exceed the estimated cost of the total project as approved by the competent authority.

(2) Sub-section (1) shall apply to every variation or abandonment of an estimate or contract as well as to an original estimate or contract.

Supply of documents and information to the Government.

39. (1) The Chairman shall furnish the ¹[Provincial Government] with a copy of the minutes of the proceedings of every meeting of the Board within ten days after the person presiding has signed such minutes under sub-section (6) of section 32.

(2) The Chairman, if so required by the ¹[Provincial Government], shall furnish it with—

- (a) a copy of any paper laid before the Board for consideration at any meeting ; or

¹See foot-note ² on p. 429, ante.

of 1934.]

(Chapter IV.—Powers and duties of the Board.—Sec. 40.)

- (b) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board ; or
- (c) a report on any such matter ; or
- (d) a copy of any document in the charge of the Chairman.

CHAPTER IV.

POWERS AND DUTIES OF THE BOARD.

40. (1) The Board shall take charge of such machinery, tools, dredgers, vessels and their equipment as the ¹[Provincial Government] may make over to them free of cost, subject to such restrictions as regards sale or disposal thereof as may be determined by the ¹[Provincial Government], and subject to such financial arrangements as may be made between the Board and the ¹[Provincial Government] as regards maintaining, or repairing the same. The Board shall thereupon bear all necessary expenses in maintaining, repairing, altering, improving or working the same :

The Board to control and administer navigable channels* and navigation works with lands, etc., appertaining to them.

Provided that—

- (a) the Board shall not be liable to pay any interest on the capital cost of such articles or to repay any loan incurred by the ¹[Provincial Government] for the purchase thereof ;
- (b) if any such articles are employed on work for the ¹[Provincial Government], it shall pay to the Board only the actual working expenses incurred by them.

(2) The ¹[Provincial Government] may, by notification, declare which of the navigable channels, other than canals as defined in the Bengal Irrigation Act, 1876, and the navigation works and the lands, buildings, locks, sluices and other works appertaining thereto held by or under the control or administration of the ¹[Provincial Government] shall, for the purposes of this Act, be controlled and administered by the Board :

Ben. Act
III of
1876.

XV of
1908.

Provided that no navigable channel within such limits as may have been declared under the Indian Ports Act, 1908, to be the limits of the Ports of Calcutta and Chittagong,

¹See foot-note * on p. 429, ante.

(Chapter IV.—Powers and duties of the Board.—Sec. 41.)

and of the navigable rivers and channels leading to the said ports shall be placed under the control and administration of the Board.

Powers of the Board in regard to navigable channels.

41. The Board may—

- (a) with the previous sanction of the ¹[Provincial Government], assume the control and administration of any other channel, not being a canal as defined in the Bengal Irrigation Act, 1876, and not held by or under the control or administration of the ¹[Provincial Government], and maintain it for the purposes of this Act :

Ben. Act
III of 1876.

Provided that if, under the provisions of the Canals Act, 1864, any local authority or person has constructed or improved a navigable channel or has been appointed to collect tolls on any line of navigation, the Board on assuming control of such navigable channel or line of navigation shall pay such compensation to the local authority or person as the Collector may decide, and shall thereupon become entitled to collect such tolls :

Ben. Act
V of 1864.

Provided further that an appeal shall lie to the Commissioner from a decision of the Collector on the question of compensation within sixty days from the date thereof and subject to the result of such appeal the decision of the Collector shall be final ;

(b) for the purposes of this Act—

- (i) make and open new navigable channels,
- (ii) clear, widen, deepen, divert or otherwise improve existing channels which are under the control and administration of the Board,
- (iii) construct locks, sluices, wharves, jetties, landing stages, warehouses, sheds, sidings, towpaths and other works, whether protective or otherwise,
- (iv) provide dredgers and other plant,
- (v) clear or destroy water-hyacinth in any district where there are navigable channels under the control and administration of the Board, and
- (vi) do all other acts necessary for the making and maintenance of such channels or for the safety and convenience of navigation or for improvement of waterways :

¹See foot-note ² on p. 429, ante.

of 1882.]

(Chapter IV.—Powers and duties of the Board.—Secs.
42, 43.)

Provided that the ¹[Provincial Government] may prohibit any such action if it considers that it is likely to cause damage or to be detrimental to agriculture or public health :

Provided also that the Board shall not do any act in contravention of the provisions of section 76 of the Bengal Embankment Act, 1882, without the previous sanction of the officer mentioned therein ;

Ben. Act
II of 1882.

- (c) with the previous sanction of the ¹[Provincial Government] turn, divert, abandon or close any channel under the control and administration of the Board ;
- (d) construct, purchase, or hire offices, toll-houses, quarters for officers and servants and any other building required for the operations of the Board ;
- (e) control navigation and traffic upon lines of navigation which are under the control and administration of the Board, and employ such establishment as may be necessary for the purpose ;
- (f) contribute towards the cost of any work which is executed or to be executed by another authority and is likely to improve a line of navigation under the control of the Board or to benefit navigation.

42. If the ¹[Provincial Government] is of opinion that any channel which is under the control and administration of the Board under section 40 or section 41 should be under the control and administration of the ¹[Provincial Government] for any purpose other than navigation, it may—

Power of
Provincial
Government
to control
channels in
certain cases.

- (a) withdraw such channel from the control and administration of the Board and assume control thereof both for navigation and such other purpose, or
- (b) impose conditions for the purpose of regulating or restricting the powers of the Board in respect of such channel.

43. It shall be the duty of the Board to make surveys and observations and to record hydraulic and tidal data in respect of all channels under their control and such other places as may be necessary for the maintenance of complete records of such channels.

Duty of the
Board to make
surveys, etc.

¹See foot-note ² on page 429, ante.

(Chapter IV.—Powers and duties of the Board.—Chapter V—
District committees—Secs. 44—47.)

Power to
purchase or lease
by agreement.

44. The Board may enter into an agreement with any person for the purchase by the Board from such person of any land which the Board are authorised to acquire, or any interest in such land, or for taking on lease such land or interest therein from such person.

Power to acquire
land under the
Land Acquisition
Act, 1894.

45. The Board may, with the previous sanction of the ¹[Provincial Government], acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

I of 1894.

Power to dispose
of land.

46. The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them :

Provided that the Board shall not lease or otherwise alienate any such land for any period exceeding three years without the previous sanction of the ¹[Provincial Government].

CHAPTER V.

DISTRICT COMMITTEES.

Formation of
a district
committee.

47. In every district in which the ¹[Provincial Government] so directs a district committee shall be formed, consisting of the following members, namely :—

- (a) the District Magistrate, *ex-officio* ;
- (b) the Chairman of the District Board, *ex-officio* ;
- (c) the District Engineer, *ex-officio* ;
- (d) the Waterways Executive Engineer, *ex-officio*, or a person appointed under section 48 ;
- (e) not more than three members to be appointed by the ¹[Provincial Government] ;
- (f) four members to be elected in the manner prescribed by rules made under section 129 by the District Board of whom two shall be members of Union Boards in the district who are not members of the District Board ; and
- (g) if the district contains any municipality which includes any navigable channel within its limits, one member to be elected, in the manner prescribed by rules made under section 129, by the Commissioners of such municipality or municipalities :

¹See foot-note ² on page 429, *ante*.

[1934.]

(Chapter V.—District committees.—Secs. 48—52.)

Provided that the ¹[Provincial Government] may direct that the number of municipal representatives to be elected shall be increased from one to two or three.

48. With the consent of the Board, the Waterways Executive Engineer may appoint another person to perform his duties as a member of the district committee.

Appointment of member in place of Waterways Executive Engineer.

49. (1) If a body of electors referred to in clause (f) or, where applicable, clause (g) of section 47 does not, within such period as may be prescribed by rules made under section 129, elect a person to be a member of the district committee, the ¹[Provincial Government] shall, by notification, appoint a person belonging to such body to be a member of the district committee.

Appointment in default of election.

(2) A person appointed under this section shall be deemed to be a member of the district committee as if he had been duly elected under section 47.

50. A person shall be disqualified for being appointed or elected a member of the district committee if he is disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 12 :

Disqualifications for being appointed or elected a member of the district committee.

Provided that a Waterways Executive Engineer or a person appointed under section 48 shall not be disqualified from being a member of the district committee by reason only of his employment under the Board.

51. The ¹[Provincial Government] shall, by notification, declare that any member of the district committee shall cease to be a member of such committee—

Removal of members of district committees.

(a) if he has become disqualified for appointment or election as a member of the committee for any of the reasons mentioned in section 12, or

(b) if he was elected as being a member of a Union Board and if he is, at the date of such notification, no longer a member of such Union Board.

52. If an appointed or elected member of the district committee dies, resigns, or ceases to be a member in pursuance of a notification published under section 51, the vacancy shall be filled within one month by a fresh appointment or election, under section 47 or section 49, as the case may be.

Filling of casual vacancies.

¹See foot-note ² on p. 429, *ante*.

(Chapter V.—District committees.—Secs. 53—58.)

Term of
office of
members of
district
committees.

53. Subject to the provisions of section 51, the term of office of the members referred to in clauses (e), (f) and (g) of section 47 shall be three years and any such member shall, if not disqualified for any of the reasons mentioned in section 12, be eligible for reappointment or re-election, as the case may be, at the end of his term.

The Chairman
of the district
committee.

54. The Chairman of the district committee shall be elected by the committee.

The Secretary
of the district
committee.

55. The District Engineer shall be the Secretary of the district committee.

Duties of
district
committee.

56. It shall be the duty of the district committee—

- (a) to collect information concerning the internal channels of the district, and, with the assistance of the Waterways Executive Engineer, to make preliminary investigations into any proposal for the improvement of such channels for the purposes of navigation which in their opinion should be investigated ;
- (b) to submit to the Board any proposal for which, in the opinion of the district committee, a detailed project should be prepared ;
- (c) to report on any proposal which may be sent by the Board to them for their opinion ;
- (d) to report to the Board their opinion regarding any detailed project which may be sent to them by the Board ;
- (e) to elect a district member to represent the district committee at any meeting of the Board to which they may be required by the Board to send a district member ; and
- (f) generally to assist the Board in carrying out the purposes of this Act.

Travelling
allowance of
members of
district
committee.

57. Every member of the district committee, other than an officer or servant of the Board, shall be entitled to receive such travelling allowance as may be prescribed by rules made under section 129.

Procedure
for meetings
of the district
committee.

58. The conduct of business and proceedings of the district committee, including the number of meetings to be held, the manner of giving notice of meetings, the fixing of a quorum, the due record of proceedings and all other necessary matters, shall be regulated by rules made under section 129.

of 1934.]

(Chapter VI.—Execution of works.—Secs. 59—65.)

CHAPTER VI.

EXECUTION OF WORKS.

59. For the purposes of this Act works shall be classified as—

Classification of works.

- (a) maintenance works ;
- (b) new works ;

in accordance with rules made under section 129.

60. The Board may, subject to the provisions of section 38, sanction and execute all maintenance works without reference to any other authority.

Power of Board to sanction and execute maintenance works.

61. New works shall be divided into—

Major and minor works.

- (a) minor works, costing not more than ten thousand rupees, and
- (b) major works, costing more than ten thousand rupees.

62. New works shall also be divided into—

District schemes and other schemes.

- (a) district schemes, and
- (b) other schemes.

A district scheme is a scheme for a new work for the improvement or extension of the internal navigable channels within a district or districts.

The decision of the Board as to whether a scheme is a district scheme or not shall be final.

63. If any proposal for a district scheme is received by the Board from any person or body other than a district committee, they shall send the proposal to the district committee.

Proposal for a district scheme to be sent to district committee.

64. The district committee, on receiving a proposal for a district scheme from the Board or from any other body or person, shall either reject the scheme or send it to the Waterways Executive Engineer for report.

Procedure of district committee on receipt of proposal.

65. After considering the Waterways Executive Engineers' report, and making such further investigation as they may deem fit, the district committee shall either reject the proposal or submit it to the Board with their recommendation regarding the preparation of a detailed project, together with the report of the Waterways Executive Engineer and any opinion which any other member of the district committee may record for the consideration of the Board.

Procedure of district committee on receipt of Waterways Executive Engineer's report.

(Chapter VI.—Execution of works.—Secs. 66—68.)

Procedure of Board on receipt of district committee's recommendation.

66. On receiving the recommendation of the district committee, the Board shall either reject the proposal or direct the Chief Engineer to prepare a detailed project :

Provided that no order which is substantially contrary to the recommendation of the district committee shall be passed by the Board until the matter in issue has been placed before a meeting of the Board to which a district member has been summoned from such district committee.

Detailed project to be sent to district committee for opinion.

67. When a detailed project for a district scheme, or for any major work which is not a district scheme, has been prepared it shall be sent to the district committee of every district in which any portion of the work is proposed to be executed. Each such district committee shall record its opinion and submit it to the Board within such time not being less than one month as may be fixed by the Chairman.

Procedure of Board in dealing with a detailed project.

68. On receiving the opinion of the district committee on the detailed project or on the expiry of the period mentioned in section 67, the Board shall either reject the scheme or approve it :

Provided that—

(a) if the scheme is a district scheme which is a minor work, no order which is substantially contrary to the opinion received by a district committee shall be passed by the Board until the scheme has been considered at a meeting to which a district member has been summoned from such district committee ;

(b) if the scheme is a district scheme which is a major work, a district member from the district committee of each district in which any portion of the work is to be executed shall, subject to the provisions of section 11, be summoned to attend the meeting or meetings at which it is to be considered ;

(c) if the scheme is a major work which is not a district scheme and a district committee in submitting their opinion under section 67 have recorded an objection to the scheme, the Board shall not approve the scheme unless it has been considered at a meeting to which a district member from such district committee has been summoned ; or, if the objection of the district committee is that the scheme ought not to be approved unless it is modified in a particular manner, the Board may approve the scheme as so modified, after informing the other district committees consulted under section 67, and after considering any objection to the modification which may be received from them within such time as may be fixed by the Chairman.

of 1934.]

(Chapter VI.—Execution of works.—Secs. 69—72.)

69. Subject, in the case of a minor work which is a district scheme, to the provisions of sections 67 and 68, the Board may sanction any scheme for a minor work without reference to any other authority.

Power of Board to sanction schemes for minor works.

70. Such particulars as may be prescribed by rules made under section 129 of all detailed projects for major works, whether such works are district schemes approved under section 68 or other schemes, shall be published by notification for general information, and copies of the notification shall be sent forthwith to the ¹[Provincial Government].

Publication of particulars of detailed projects for major works.

71. After the expiry of a period of two months from the date of the publication of the notification under section 70 and after considering any objections which may have been received, the Board—

Procedure after publication of particulars of a detailed project.

(a) in the case of a major work estimated to cost not more than one lakh of rupees in respect of which no objection has been received from the ¹[Provincial Government], shall either sanction the execution of the scheme or pass such other orders as they may think fit ;

(b) in the case of a major work estimated to cost not more than one lakh of rupees in respect of which an objection has been received from the ¹[Provincial Government], and in the case of a major work estimated to cost more than one lakh of rupees, shall reject or abandon the scheme or sanction the execution of the scheme after having received the approval of the ¹[Provincial Government] :

Provided that nothing contained in this Act shall authorise the Board to sanction or execute any work contrary to a prohibition under the first proviso to clause (b) of section 41, or without previous sanction under clause (c) of that section or in contravention of the provisions of section 76 of the Bengal Embankment Act, 1882.

Ben. Act
II of 1882.

72. A district member from the district committee of each district in which any portion of the work is proposed to be executed, shall, subject to the provisions of section 11, be summoned to any meeting of the Board at which a district scheme which is a major work is to be dealt with under section 71.

District members to be summoned to certain meetings of the Board.

¹See foot-note ² on p. 429, ante.

(Chapter VII.—~~Taxation~~.—Secs. 73—76.)

CHAPTER VII.

TAXATION.

The Canals Act,
1864, to apply to
navigable
channels.

73. All navigable channels under the control of the Board shall be deemed to be navigable channels notified by the ¹[Provincial Government] under section 2 of the Canals Act, 1864, and the provisions of the said Act shall apply to and be in force as regards all such channels.

Ben. Act V
of 1864.

The Board to
discharge
certain functions
under the
Canals Act,
1864.

74. Notwithstanding anything contained in the Canals Act, 1864, the Board shall, in respect of all lines of navigation under their control, discharge the functions of the person, appointed to collect tolls under the Canals Act, 1864, and of the supervisor of a line of navigation under that Act.

Tax on the
owners of
steam-vessels.

75. The Board may require the owner of every steam-vessel used for the transport of passengers of goods on lines of navigation under the control of the Board—

(a) to pay to the Board such percentages on the fare received in respect of such passengers, or such rate according to the number of such passengers, as may be prescribed by the Board with the sanction of the ¹[Provincial Government],

(b) to pay to the Board such percentages on the freight received in respect of such goods or of any class of such goods, or such rate according to weight, quantity or volume of such goods, or any class of such goods, as may be prescribed by the Board with the sanction of the ¹[Provincial Government].

Owners of
steam-vessels
to furnish
quarterly returns.

76. (1) The owner of every steam-vessel referred to in section 75 shall prepare and deliver, or cause to be prepared and delivered, to the Chairman a return for every quarter showing in the form prescribed by rules made under section 129 all passengers and goods or other articles carried by such vessel, on account of whom or which the tax imposed by section 75 is payable, and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(2) Every such return shall be delivered to the Chairman or posted to his address within two months after the end of the quarter to which it relates.

(3) If this Act comes into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

¹See foot-note * on p. 429, ante.

of 1934.]

(Chapter VII.—Taxation.—Secs. 77—79.)

77. (1) The Chairman may direct an inquiry to be made by an officer of the Board in order to ascertain the amount received by the owner of any steam-vessel referred to in section 75 on account of passengers and goods, or the number of passengers, or the weight, quantity or volume of goods or any class of goods, carried by the vessel during any quarter and on receiving the report of such officer may certify the amount due from the owner. A copy of the certificate shall be served on the owner by post, and the owner shall thereupon be liable, subject to the provisions of sub-sections (2) and (3), to pay the certified amount together with any amount payable as penalty on a conviction under section 148.

Inquiry and certificate by Chairman as to amount of tax due.

(2) An owner from whom any amount has been certified under sub-section (1) to be due may appeal to the ¹[Provincial Government], within thirty days after the service of the copy of the certificate, to cancel or modify such certificate and the ¹[Provincial Government], after calling for such information and causing such inquiry, if any, to be made as it thinks fit, shall determine the amount, if any, for which the owner shall be liable and shall cancel, modify or confirm the certificate accordingly.

(3) Where an owner has appealed to the ¹[Provincial Government] under sub-section (2) he shall not be liable, pending the orders of the ¹[Provincial Government] on the appeal, to pay to the Board any part of the amount in respect of which the certificate has been made, except such part as he admits to be due from him to the Board.

78. Every amount due from the owner of a steam-vessel in respect of any tax imposed under section 75 shall be paid in such manner and within such period as may be prescribed by rules made under section 129.

Manner and time of payment of tax.

79. (1) With the previous sanction of the ¹[Provincial Government] the Board may, by notification, give notice of their intention to levy licence fees in respect of any class of vessel using any line of navigation under the control of the Board.

Power of Board to levy licence fees.

(2) Every notification issued under sub-section (1) shall be published at such places and for such period as the ¹[Provincial Government] may fix, and shall specify—

- (a) the licence fee which it is proposed to impose ;
- (b) the place of collection of such fee ; and

¹See foot-note 2 on p. 429, *ante*.

(Chapter VII.—Taxation.—Chapter VIII.—Finance.—
Secs. 80—83.)

- (c) the time within which any objections to the proposal may be submitted to the Board by persons interested.

(3) After the expiry of the time mentioned in clause (c) of sub-section (2) and after considering any objections which may have been received, the Board may impose the proposed licence fee with or without modification.

The Board to
appoint persons
to collect
licence fees.

80. The Board shall appoint such persons as they may think fit to collect licence fees under this Act.

Enforcement of
payment of
licence fees.

81. (1) If any licence fee due under the provisions of this Act in respect of any vessel is not paid on demand to the person authorised to collect the same, such person may seize such vessel, and any furniture thereof, and detain the same until the fee is paid.

(2) Where any vessel is seized under sub-section (1), the provisions of section 9 of the Canals Act, 1864, shall be applicable, and the vessel and the furniture thereof shall be liable to be sold, as if the vessel had been seized for failure to pay a toll under that Act.

Ben. Act
V of 1864.

CHAPTER VIII.

FINANCE.

Loans.

Power of Board
to borrow
money.

82. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the ¹[Provincial Government] may approve, any sum necessary for the purpose of—

- (a) meeting expenditure debitable to the capital account under section 115, or
(b) repaying any loan previously taken under this Act.

* * * * *

Loans from
Banks.

83. Whenever the borrowing of any sum has been approved under section 82, the Board may, instead of borrowing such sum or any part thereof from the public, but subject

¹See foot-note 2 on p. 429, *ante*.

²The proviso was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter VIII.—Finance.—Secs. 84—87.)

to any direction given by the ¹[Provincial Government], take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part ;

and, with the previous sanction of the ¹[Provincial Government], may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or of the sums from time to time advanced on such cash account with interest.

84. When any sum of money has been borrowed under section 82 or section 83 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the ¹[Provincial Government].

Diversion of borrowed money to purposes other than those first approved.

85. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the ¹[Provincial Government], may from time to time determine.

Form, signature, exchange, transfer and effect of debentures.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debentures being prior in date to others.

86. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman ; and such signature may be engraved, lithographed or impressed by any mechanical process.

Signature of coupons attached to debentures.

87. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons :

Payment to survivors of joint payees.

IX of 1872.

Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.

¹See foot-note 2 on p. 429, ante.

(Chapter VIII.—Finance—Secs. 88—91.)

Receipt by
joint holder
for interest
or dividend.

88. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

Priority of
payments for
interest and
repayment of

89. All payments due from the Board for interest on, or the repayment of, loans, shall be made in priority to all other payments due from the Board.

Repayment
of loans
taken under

90. Every loan taken by the Board under section 82 shall be repaid within the period approved by the ¹[Provincial Government] under that section, and, subject to the provisions of sub-section (2) of section 117, by such of the following methods as may be so approved, namely :—

- (a) from a sinking fund established under section 91 in respect of the loan, or
- (b) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or
- (c) if the Board have, before borrowing money on debentures, reserved, by public notice, a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods—then by paying such instalments at such periods, or
- (d) from money borrowed for the purpose under clause (b) of section 82, or
- (e) partly from the sinking fund established under section 91 in respect of the loan, and partly from money borrowed for the purpose under clause (b) of section 82.

Establishment
maintenance
of sinking
funds.

91. (1) Whenever the ¹[Provincial Government] have approved the repayment of a loan from a sinking fund, the Board shall establish such a fund and shall pay into it every year, until the loan is repaid, a sum so calculated that, if regularly paid throughout the period approved by the ¹[Provincial Government] under section 82, it would, with accumulations in the way of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the end of that period.

(2) The rate of interest on the basis of which the sum referred to in sub-section (1) shall be calculated shall be such as may be prescribed by the ¹[Provincial Government].

¹See foot-note 2 on p. 429, ante.

of 1934.]

(Chapter VIII.—Finance.—Secs. 92—95.)

92. Notwithstanding anything contained in section 91, if at any time the sum standing at credit of the sinking fund established for the repayment of any loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the loan at the end of the period approved by the ¹[Provincial Government] under section 82, then, with the permission of the ¹[Provincial Government] further annual payments into such funds may be discontinued.

Power to discontinue payments into sinking fund.

93. (1) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in—

Investment of sinking funds.

- (a) Government securities, or
- (b) Securities guaranteed ²[by the Central or the Provincial Government], or
- (c) Calcutta Municipal debentures, or
- (d) debentures issued by the Port Commissioners, or
- (e) debentures issued by the Board,

in the joint names of the Secretary to the Government of Bengal in the Finance Department and the Accountant-General, Bengal, to be held by them as trustees for the purpose of repaying from time to time the debentures issued by the Board.

(2) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Any investment made under this section may, from time to time, subject to the provisions of sub-section (1), be varied or transposed.

94. The aforesaid trustees may from time to time apply any sinking fund or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established and until such loan is wholly discharged shall not apply the same for any other purpose.

Application of sinking fund.

95. (1) The aforesaid trustees shall, at the end of every financial year, transmit to the Chairman a statement showing—

Annual statements by trustees.

- (a) the amount which has been invested during the year under section 93,

¹See foot-note 2 on p. 429. *ante*.

²These words were substituted for the words "by the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VIII.—Finance.—Secs. 96—98.)

- (b) the date of the last investment made previous to the transmission of the statement,
- (c) the aggregate amount of the securities held by them,
- (d) the aggregate amount which has, up to the date of the statement, been applied under section 94 in or towards repaying loans, and
- (e) the aggregate amount already paid into each sinking fund.

(2) Every such statement shall be laid before the Board and published by notification.

Annual examination of sinking funds.

96. (1) The said sinking funds shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the ¹[Provincial Government] specially sanctions a gradual readjustment.

Enforcement of liabilities.

Procedure if Board fail to make any payment or investment in respect of loans.

97. (1) If the Board fail—

- (a) to pay any interest due in respect of any loan taken in pursuance of section 82, or
- (b) to make any payment prescribed by section 90, section 91 or sub-section (2) of section 96, or
- (c) to make any investment prescribed by section 93,

the ¹[Provincial Government] may take possession of any money or other assets, movable or immovable, belonging to the Board and of all rents and other income of the Board, and out of the aforesaid funds, assets or income may direct the Accountant-General, Bengal, to make such payment or set aside and invest such sums as ought to have been invested under the said section 93.

Contributions.

Government contribution.

98. There shall be payable by the ¹[Provincial Government] to the Board during the first five years after the commencement of this Act an annual contribution of not less than

¹See foot-note 2 on p. 429, ante.

of 1934.]

(Chapter VIII.—Finance.—Secs. 99—102.)

two lakhs and fifty thousand rupees payable in equal instalments on the first day of each quarter and after the expiry of the above period such annual contribution as may be determined from time to time by the ¹[Provincial Government]:

Provided that on the representation of the Board or otherwise the ¹[Provincial Government] may raise its contribution to any sum larger than the amount provided in this section.

Ben. Act
III of 1890

99. Notwithstanding anything contained in the Calcutta Port Act, 1890, or in any other Act, the Port Commissioners may, with the previous sanction of the ²[Central Government], pay from the funds of the Port Commissioners to the Board a contribution towards the cost of any work executed or to be executed by the Board which in the opinion of the ²[Central Government] will be directly or indirectly beneficial to the Port of Calcutta.

Contribution
by the Port
Commissioners
for any work
beneficial to the
Port of Calcutta.

100. If this Act is directed to come into force during a quarter, the first instalment of the contribution payable under section 98 shall bear such proportion to the sum payable thereunder as the unexpired portion of that quarter bears to the whole quarter.

Manner of
payment of
contribution for
the first quarter.

Budget estimates.

101. (1) The Chairman shall, at a special meeting to be held in the month of January in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

Estimates of
income and
expenditure
to be laid
annually before
the Board.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the ¹[Provincial Government] or the Board may from time to time direct.

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

102. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

Sanction of
Board to
estimates.

¹See foot-note 2 on p. 429, *ante*.

²These words were substituted for the words "Local Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VIII.—Finance.—Secs. 103—106.)

Approval of Provincial Government to estimates.

103. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the [Provincial Government], who may, at any time within two months after receipt of the same,—

- (a) approve the estimate, or
- (b) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board, they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the ¹[Provincial Government], who may then approve it.

Special provisions as to the first estimate after the constitution of the Board.

104. (1) A special meeting of the Board shall be held as soon as may be expedient after the day appointed under sub-section (1) of section 23 and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

(2) The provisions of sub-sections (2) to (4) of section 101 and sections 102 and 103 shall apply to the said estimate.

Supplementary estimates.

105. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

(2) The provisions of sub-sections (3) and (4) of section 101 and sections 102 and 103 shall apply to every supplementary estimate.

Adherence to estimate, and maintenance of closing

106. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the ¹[Provincial Government].

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely :—

- (a) re-payments of moneys belonging to contractors or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake ;

¹See foot-note 2 on p. 429, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Secs. 107, 108.)

I of 1894.

(b) payments due under a decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award by a Court under the Land Acquisition Act, 1894 ;

(c) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 137 ;

(d) sums payable under this Act by way of compensation ; and

(e) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (e) of sub-section (3), the Chairman shall forthwith report the circumstances to the ¹[Provincial Government], and shall at the same time explain how the Board propose to cover the expenditure.

Banking and Investments.

107. (1) All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the Imperial Bank of India or a branch thereof or into a Government treasury to the credit of an account to be called "The Bengal Waterways Board Fund."

Receipt of moneys, and deposit in the Imperial Bank of India or a Government treasury.

(2) The Chairman may, on behalf of, and with the sanction of, the Board transfer any money at the credit of the said account between the Imperial Bank of India, such of its branches and such Government treasuries as the Board may, from time to time, determine.

108. (1) Surplus moneys at the credit of the said account may from time to time be—

Investment of surplus money.

(a) deposited at interest in the Imperial Bank of India or in any other Bank in Calcutta approved by the ¹[Provincial Government] in this behalf, or

(b) invested in any of the securities or debentures mentioned in sub-section (1) of section 93 of this Act or in section 20 of the Indian Trusts Act, 1882.

II of 1882.

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board ; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

¹See foot-note 2 on p. 429, *ante*.

(Chapter VIII.—Finance.—Secs. 109—112.)

**Payments
by cheque.**

109. (1) No payment shall be made by the Imperial Bank of India, or any of its branches or a Government treasury out of the account referred to in section 107, except upon a cheque.

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

**Signature of
orders under
sections 107
and 108,
and cheques.**

110. (1) All orders for making any transfer under sub-section (2) of section 107 or for making any deposit, investment, withdrawal or disposal under section 108 shall be signed—

- (a) by the Chairman and the Secretary to the Board,
or
- (b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman.

(2) All cheques referred to in section 109 shall be signed—

- (a) by the Chairman and the Secretary to the Board,
or
- (b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman, or
- (c) in the case of payments which a Waterways Executive Engineer or other officer of the Board may make under rules made under section 129, then by such Engineer or officer, as the case may be.

**Duty of
Chairman
and others
before signing
cheques.**

111. Before the Chairman or any other Trustee or the Secretary or a Waterways Executive Engineer or any other officer of the Board signs a cheque under section 110, he shall satisfy himself that the sum for which such cheque is drawn is required for a purpose or work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in sub-section (3) of section 106.

Accounts.

**Definition of
“cost of
management”**

112. (1) The expression “cost of management”, as used in the following sections in this chapter, means—

- (a) the pay and house-rent allowance (if any) of the Chairman or acting Chairman, and the contributions referred to in sub-section (2) of section 14 ;

of 1934.]

(Chapter VIII.—Finance.—Secs. 113, 114.)

- (b) all fees and travelling allowance paid under section 35, for attendance at meetings ;
- (c) all travelling allowance paid to members of district committees under section 57 ;
- (d) all grants made to the district committees for carrying out the purposes of this Act ;
- (e) the pay, fees and allowances of, and the contributions paid under section 136 in respect of, officers and servants of the Board who are employed in accordance with the provisions of section 24 ;
- (f) the remuneration of other employees of the Board except employees who are paid by the day or whose pay is directly charged to work ;
- (g) the cost, if not chargeable to any specific work, of working launches and other boats maintained by the Board ; and
- (h) all office expenses incurred by the Board and by the district committee.

(2) The expression “office expenses”, in clause (h), means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture therefor, and charges for printing and stationery.

113. (1) The Board shall keep a capital account and a revenue account.

Keeping of capital account and revenue account.

(2) The capital account shall show separately all expenditure incurred by the Board on every work which the Board, with the sanction of the ¹[Provincial Government], may decide to finance from capital account.

114. There shall be credited to the capital account—

Credits to capital account.

- (a) all moneys received on account of loans taken by the Board in pursuance of section 82 or section 83;
- (b) the proceeds of the sale of any land vested in the Board, or if the cost of the land was paid from revenue account or out of an advance from revenue account, only the portion of the sale proceeds which remains after crediting to the revenue account the sum paid or advanced from it ;
- (c) the proceeds of the sale of any movable property (including tools and plant and securities for money invested from the capital account) belonging to the Board ;

¹See foot-note 2 on p. 429, *ante*.

(Chapter VIII.—Finance.—Secs. 115, 116.)

- (d) all lump sums received from the Government or any other source in aid of the capital account ;
- (e) all premia received by the Board in connection with leases for any term exceeding thirty years ;
- (f) all moneys resulting from the sale of securities by direction of the ¹[Provincial Government] under section 118 ; and
- (g) all sums (if any) which the ¹[Provincial Government] directs, under sub-section (2) of section 117, to be credited to the capital account.

Application of capital account.

115. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to—

- (a) meeting all costs of framing and executing such works as the Board may, with the sanction of the ¹[Provincial Government], decide to finance from capital account ;
- (b) the repayment of loans from money borrowed in pursuance of clause (b) of section 82 ;
- (c) making, or contributing towards the cost of making, surveys, in pursuance of section 145 ;
- (d) meeting such proportion of the cost of management as the Board may, with the sanction of the ¹[Provincial Government], prescribe in this behalf ; and
- (e) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

Credits to revenue account.

116. There shall be credited to the revenue account—

- (a) all proceeds received by the Board of taxes, tolls and fees imposed under Chapter VII ;
- (b) all ²* damages and proceeds of confiscations received by the Board under section 153 ;
- (c) all annually recurring sums received from the Government or any other source in aid of the funds of the Board ;
- (d) all premia received by the Board in connection with leases for any term not exceeding thirty years ;
- (e) all rents of land vested in the Board ; and
- (f) all other receipts by the Board which are not required by section 114 to be credited to the capital account.

¹See foot-note 2 on p. 429, *ante*.

²The word " fines " were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter VIII.—Finance.—Secs. 117—118.)

117. (1) The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to— Application of revenue account.

- (a) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of clause (a) of section 82, or section 83, and all other charges incurred in connection with such loans ;
- (b) paying all sums due from the Board in respect of rates and taxes imposed by a local authority upon land vested in the Board ;
- (c) paying the cost (if any) of maintaining an establishment for the collection of tolls and revenue due to the Board ;
- (d) paying all sums which the ¹[Provincial Government] may direct to be paid to any auditor under section 124 ;
- (e) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (d) of section 115 ;
- (f) paying the cost of works which the Board, at a meeting, may decide to meet from revenue account ; and
- (g) paying all other sums due from the Board, other than those which are required by section 115 to be disbursed from the capital account.

(2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,

subject to the maintenance of a closing balance of one lakh of rupees, and

except as provided in section 119, and

unless the ¹[Provincial Government] otherwise directs, be invested, in the manner prescribed in section 93, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.

118. If, at any time after any surplus referred to in sub-section (2) of section 117 has been invested, the ¹[Provincial Government] is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Powers to direct sale of securities in which any surplus of the revenue account is invested.

¹See foot-note 2 on p. 429, ante.

(Chapter VIII.—Finance.—Secs. 119—125.)

Advances from revenue account to capital account.

119. (1) Notwithstanding anything contained in section 117, the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

(2) Every such advance shall be refunded to the revenue account as soon as may be practicable.

Advances from capital account to revenue account.

120. (1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

Submission of abstracts of accounts to Provincial Government.
Annual audit of accounts.

121. The Board shall submit to the ¹[Provincial Government] at the end of every financial year, an abstract of the accounts of their receipts and expenditure.

122. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the ¹[Provincial Government] may appoint in this behalf.

Powers of auditor.

123. The auditor so appointed may,—

- (a) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;
- (b) by written summons require any person having the custody or control of, or being accountable for, any such document to appear in person before him ; and
- (c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

Remuneration of auditor.

124. The Board shall pay to the said auditor such remuneration as the ¹[Provincial Government] may direct.

Reports and information to be furnished by auditor to the Board.

125. The said auditor shall—

- (a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due to the Board, or in the accounts, and report the same to the ¹[Provincial Government],
- (b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and

¹See foot-note 2 on p. 429, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Chapter IX.—Rules—
Secs. 126—129.)

(c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

126. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

Board to remedy defects pointed out by auditor.

127. The Chairman shall cause the report mentioned in clause (c) of section 125, to be printed and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Auditor's report to be sent to each Trustee and considered by Board.

128. Within two months after the receipt of the said report, or within such longer period as the ¹[Provincial Government] may appoint, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the ¹[Provincial Government].

Publication and submission of an abstract of the accounts.

CHAPTER IX.

RULES.

129. (1) With the previous sanction of the ¹[Provincial Government] the Board may make rules for carrying out the purposes of this Act.

Further powers to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

- (a) regulating elections under sub-sections (1), (2) and (4) of section 8,
- (b) prescribing the date referred to in section 10,
- (c) regulating the summoning of district members to attend meetings of the Board under section 31,
- (d) regulating the delegation of powers and duties of the Board to committees appointed under section 33,
- (e) prescribing the cases in which and the rates at which travelling allowance shall be payable under section 35 and the maximum amount of fees and travelling allowance payable under sub-section (3) of that section,

(1) See foot-note 2 on p. 429, ante.

(Chapter IX.—Rules.—Sec. 129.)

- (f) prescribing the officers by whom estimates may be sanctioned and contracts made under section 38,
 - (g) regulating navigation and traffic under clause (e) of section 41,
 - (h) prescribing the manner in which members are to be elected under clauses (f) and (g) of section 47,
 - (i) prescribing the period within which, under section 49, members are to be elected,
 - (j) prescribing the travelling allowance payable under section 57,
 - (k) regulating the conduct of business and proceedings of the district committee under section 58,
 - (l) regulating the classification of works as maintenance works and new works under section 59,
 - (m) prescribing the particulars to be published under section 70 of detailed projects for major works,
 - (n) prescribing the manner of payment of amounts due in respect of taxes imposed under section 75, and the periods within which such amounts shall be paid,
 - (o) prescribing the form of return to be made under section 76,
 - (p) prescribing the payments which may be made by a Waterways Executive Engineer or such other officer under section 110,
 - (q) prescribing the proportion of the cost of management to be met from capital account under clause (d) of section 115.
- (3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable—
- (i) with fine which may extend to five hundred rupees, or
 - (ii) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.
- (4) If, in the opinion of the ¹[Provincial Government], it is necessary or expedient for the purposes of this Act that any rule should be made under this section and the Board fail to make, or to propose in a form approved by the ¹[Provincial Government], such rule within such time as the ¹[Provincial

¹See foot-note 2 on p. 429, ante.

of 1934.]

(Chapter IX.—Rules.—Secs. 130—134.)

Government] may fix, the ¹[Provincial Government] may, subject to the conditions of section 130, itself make such rule. A rule so made shall be deemed to be a rule duly made by the Board under this section.

130. The power to make rules shall be exercised subject to the following conditions :—

Conditions precedent to the making of rules.

- (1) after approval by the ¹[Provincial Government] draft rules shall be published in the ²[*Official Gazette*] for a period of six weeks ;
- (2) any objections received to the draft rules shall be considered by the ¹[Provincial Government] and the rules, after such modification as may be necessary, shall be finally sanctioned ;
- (3) all rules which have been finally sanctioned shall be published in the ²[*Official Gazette*] and in such newspapers as the ¹[Provincial Government] may direct, and shall come into effect on the fifteenth day after such publication in the ²[*Official Gazette*].

Ben. Act
V of 1864.

131. (1) The Chairman shall cause all rules made by the ¹[Provincial Government] under the Canals Act, 1864, for the management of lines of navigation under the control of the Board, and all rules made by the Board under clause (g) of sub-section (2) of section 129, to be printed in English and Bengali, and shall cause printed copies thereof to be delivered to any applicant on payment of a price to be fixed by the Chairman.

Printing and sale of copies of rules.

(2) Notice of the fact that copies of rules are obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

132. Copies of the rules described in sub-section (1) of section 131 shall be delivered free to every person paying a licence fee under section 79.

Free supply of copies of rules.

133. Copies of the rules described in sub-section (1) of section 131 shall be hung up in a conspicuous place in every toll office of the Board.

Exhibition of copies of rules.

134. The ¹[Provincial Government] may, at any time, by notification, cancel any rule made by the Board under section 129.

Power of Provincial Government to cancel rules made under section 129.

¹See foot-note 2 on p. 429, *ante*.

²See foot-note 1 on p. 430, *ante*.

[Ben. Act XII]

(Chapter X.—Supplemental provisions—Secs. 135—137.)

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

*Status of Trustees, etc.*Trustees, etc.,
deemed public
servants.

135. Every Trustee, and every officer and servant of the Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.*Contributions towards leave allowances and pensions of Government servants.*Contributions by
Board towards
leave allowances
and pensions of
servants of the
Crown employed
under this Act.

136. The Board shall pay such contributions for the leave allowances and pension of any ¹[servant of the Crown] employed as Chairman or as an officer or servant of the Board, as may be ²[required, by the conditions of his service under the Crown to be made by him or on his behalf.]

*Legal proceedings.*Powers of
Chairman as
to institution,
etc., of legal
proceedings
and obtaining
legal advice.

137. The Chairman may, subject to the control of the Board,—

- (a) institute, defend or withdraw from, legal proceedings under this Act or any rule made thereunder ;
- (b) compound any offence against this Act or any rule made thereunder which, under any law for the time being in force, may lawfully be compounded ;
- (c) admit, compromise or withdraw any claim made under this Act or any rule made thereunder ; and
- (d) obtain or authorise the obtaining of such legal advice and assistance as he may from time to time think fit necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

¹See foot-note 2, on p. 437, *ante*.

²These words were substituted for the words " prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter X.—Supplemental provisions.—Secs. 138—141.)

138. No suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made thereunder.

Indemnity to Board, etc.

139. No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made thereunder, until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left.

Notice of suit against Board, etc.

Police.

140. On the written application of the Chairman or other officer to whom power has been delegated by the Chairman by general or special order, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made thereunder.

Arrest of offenders.

Evidence.

141. Whenever, under this Act or any rule made thereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

Proof of consent, etc., of Board or Chairman or officer or servant of Board.

(a) the Board or the Chairman, or

(b) any officer or servant of the Board,

a written document, signed, in case (a) by the Chairman, and in case (b) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

(Chapter X.—Supplemental provisions.—Secs. 142—145.)

Validation.

Validation of
acts and
proceedings.

142. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the Board or any committee, or
- (b) any person having ceased to be a Trustee, or
- (c) any Trustee or a district member having voted or taken any other part in any proceeding in contravention of section 36, or
- (d) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed, as prescribed in sub-section (6) of section 32, shall be taken to have been duly convened and to be free from all defect and irregularity.

Compensation.

General power of
Board to pay
compensation.

143. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made thereunder, in the Board or the Chairman or any officer or servant of the Board.

Public notices and advertisements.

Public notices
how to be
made known.

144. Every public notice given under this Act or any rule made thereunder shall be in writing over the signature of the Chairman, and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

Surveys.

Power to
make surveys,
or contribute
towards their
cost.

145. The Board may

- (a) cause a survey of any land to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by any other local authority.

of 1934.]

(Chapter X.—Supplemental provisions.—Secs. 146, 147.)

Power of entry.

146. (1) The Chairman, any other Trustee, or an officer of the Board or other person acting under the ~~general~~ or special order of any Trustee or officer of the Board may, with or without assistants or workmen, enter into or upon any land, in order—

Power of entry.

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,
- (c) to dig or bore into the subsoil,
- (d) to set out boundaries and intended lines of work,
- (e) to mark such levels, boundaries and lines by placing marks, and cutting trenches, or
- (f) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or of any rule made thereunder or of any work or of any inquiry under this Act :

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house, and no public building or hut which is used as a dwelling place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry.

(2) Whenever the Chairman or other person enters into or upon any land in pursuance of sub-section (1) he shall, at the time of such entry, award compensation for any damage which may be occasioned by any proceeding under this section. Any person dissatisfied with the amount of compensation awarded under this sub-section may appeal to the Board.

(3) Notwithstanding anything contained in this Act, any party dissatisfied with the decision of the Board, may refer the matter to the civil court having jurisdiction in the matter.

Penalties.

147. If any Trustee, or any officer or servant of the Board' knowingly acquires, directly or indirectly, by himself or by any partner, employer or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by, or on behalf of, the Board,

Punishment for acquiring share or interest in contract, etc., with the Board.

(Chapter X.—Supplemental provisions.—Secs. 148—150.)

not being a share or interest such as, under sub-section (2) of section 12 it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed an offence under section 168 of the Indian Penal Code. Act XLV of 1860.

Penalty for failure to make return, pay tax, etc.

* 148. (1) If the owner of any steam-vessel omits to make any return required by section 76 or refuses to sign or complete the same, he shall be punished with fine which may extend to one thousand rupees.

(2) If, after being convicted under sub-section (1), the owner persists in omitting to make, sign or complete a return, he shall be punished with a further fine which may extend to five hundred rupees, for every day during which such omission is continued.

(3) If the owner of any steam-vessel fails to pay to the Board within the period prescribed by rules made under section 129 any amount due to the Board in respect of any tax imposed under section 75, he shall be punished with fine which may extend to five hundred rupees for every day during which the amount remains unpaid after the expiry of the said period.

(4) If a return made and delivered under section 76 is false or incorrect in any material particular, the person signing the statement shall be punished with fine which may extend to five hundred rupees.

(5) A prosecution or conviction under this section shall not affect the liability of the offender to a prosecution under section 199 of the Indian Penal Code.

Penalty for evasion of payment of toll or licence fee.

149. Any person who refuses or evades or attempts to evade payment of any toll or licence fee due under this Act shall be punished with fine which may extend to fifty rupees or with imprisonment in lieu of fine which may extend to one month.

Penalty for obstruction to line of navigation.

150. Any person who wilfully causes, or aids in causing any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who wilfully omits to remove such obstruction after being lawfully required so to do, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such amount as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage, and such amount shall be recovered as a fine.

of 1934.]

(Chapter X.—Supplemental provisions.—Secs. 151—154.)

151. If any person fails to comply with any requisition made under section 123, he shall be punished—

Penalty for failure to comply with requisition made by auditor.

- (a) with fine which may extend to one hundred rupees; or
- (b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.

152. If any person—

- (a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made thereunder, or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised by this Act or any rule made thereunder,

Penalty for obstructing contractor or removing mark.

he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

Disposal of fines and damages.

153. All ¹* * damages realized, and the proceeds of all confiscations, in cases in which prosecutions are instituted under this Act or any rule made thereunder, shall be paid to the Board.

Damages and proceeds of confiscations to be paid to Board.

Control.

154. (1)(i) If the Board sanction, execute or attempt to execute any work which in the opinion of the ²[Provincial Government], the Board are not authorized to sanction or execute under this Act, or

Power of Provincial Government to control the Board.

(ii) if, in the opinion of the ²[Provincial Government], the Board exceed or abuse their powers, or persistently make default in the performance of any of the duties imposed on them by this Act,

¹The words "fines and" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 429, *ante*.

[Ben. Act XII of 1934.]

(Chapter X.—Supplemental provisions.—Sec. 154.)

the ¹[Provincial Government] may, by an order in writing, take all or any of the following actions, namely :—

- (a) cancel any resolution or order of the Board which is contrary to the provisions of this Act ;
- (b) withhold for such period as it thinks fit the contribution payable to the Board under section 98 ;
- (c) supersede the Board for such period as may be specified in the order.

(2) When an order of supersession has been passed under clause (c) of sub-section (1) the following consequences shall ensue—

- (a) all the Trustees shall, as from the date of the order, vacate their offices as such Trustees,
- (b) all the powers and duties which may, under the provisions of this Act, be exercised and performed by the Chairman and by the Board shall

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In clause (c) of sub-section (2) of section 154 for the words "the Crown for the purposes of the Province" substitute the words "the State Government".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

such period, the ¹[Provincial Government] may reconstitute the Board by a fresh election and fresh appointment, and any of the Trustees who vacated their offices under clause (a) of sub-section (2) may be declared by an order of the ¹[Provincial Government] to be disqualified for election or appointment.

¹See foot-note 2 on p. 429, ante.

²These words were substituted for the words "the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act XIII of 1934.

(THE BENGAL WAKF ACT, 1934.)

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Bengal Act XIII of 1934.

(THE BENGAL WAKF ACT, 1934.)¹

(19th July 1934)

An Act to make provision for the proper administration of wakf property in Bengal.

WHEREAS it is expedient to make provision for the proper administration of wakf property in Bengal;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

5 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 37;
9 & 10 Geo.
V, c. 101.

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Wakf Act, 1934. Short title,
extent and
commencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force, in whole or in part, on such date as the ²[Provincial Government] may, by notification, appoint, and for this purpose different dates may be appointed for different provisions of this Act.

2. (1) For the purpose of making a survey of wakf properties existing at the date of the commencement of this Act the ²[Provincial Government] may, by notification, bring Chapter IV into force on such date as may be specified in the notification, and thereupon, notwithstanding anything contained in this Act, the ²[Provincial Government] may appoint persons, either by name or by their official designation, to perform the duties imposed and exercise the powers conferred by that chapter on the Commissioner and the Board. Preliminary
survey of
wakf property.

¹For Statement of Objects and Reasons, see "*Calcutta Gazette*," 1932, Pt. IV, p. 417; and for report of the Select Committee, see *ibid*, 1933, Pt. IV, p. 187; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXIX; No. 1, p. 269, and *ibid* Vol. XLIII, No. 4, pages 36, 79, 179 and 237.

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Preliminary.—Secs. 3—6.)

(2) The cost of survey under sub-section (1) shall be paid to the ¹[Provincial Government] from the Wakf Fund when that fund is formed under section 61.

Application.

3. Save as herein otherwise specifically stated this Act shall apply to all wakfs, whether created before or after the commencement of this Act, any part of the property of which is situated in Bengal :

Provided that this Act shall not apply to any wakf created by the Dawoodi Bhora community.

Power to exclude wakfs from the operation of this Act.

4. The Board may, with the previous sanction of the ¹[Provincial Government], and subject to rules made by the ¹[Provincial Government] in this behalf, exempt any wakf from all or any of the provisions of this Act.

Exemption of certain wakf properties.

5. The ¹[Provincial Government] may, by notification in the ²[Official Gazette], exempt any wakf property, which has been retained under the superintendence of the Board of Revenue in accordance with the provisions of section 21 of the Religious Endowments Act, 1863, from all or any of the provisions of this Act, for so long as the property remains under such superintendence.

XX of
1863.

Definitions.

6. In this Act, unless there is anything repugnant in the subject or context—

(1) “beneficiary” used with reference to a wakf-al-al-aulad means a wakif, any member of his family or descendants entitled to receive any pecuniary or other material benefits from such wakf ;

(2) “benefit” does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli ;

(3) “Board” means the Board of Wakfs constituted under section 7 ;

(4) “Commissioner” means the Commissioner of Wakfs appointed under section 16 ;

(5) “enrolment” means the enrolment of a wakf under section 44 ;

(6) “mutwalli” means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutwalli of a wakf and

¹See foot-note 2 on p. 481, ante.

²These words were substituted for the words “Calcutta Gazette” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter II.—Constitution of Board and appointment of Commissioner.—Sec. 7.)

- includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in this Act, any person or committee for the time being managing or administering any wakf property as such;
- (7) "net available income" of a wakf means the income as determined, from time to time, in the manner prescribed by the ¹[Provincial Government];
- (8) "person interested in a wakf" means a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambarah*, *darga*, *maqbara* or other religious institution connected with the wakf or to participate in any religious or charitable ministrations under the wakf;
- (9) "stranger to a wakf" means a person other than a person interested within the meaning of clause (8);
- (10) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;
- (11) "wakf-al-al-aulad" means a wakf under which not less than seventy-five *per cent.* of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants;
- (12) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

CHAPTER II.

CONSTITUTION OF BOARD AND APPOINTMENT OF COMMISSIONER.

The Board of Wakfs.

7. The ¹[Provincial Government] shall, as soon as possible after the commencement of this Act, establish a Board to be called "the Board of Wakfs," and such Board shall be a

Establishment
of Board of
Wakfs.

¹See foot-note 2 on p. 481, *ante*.

(Chapter II.—Constitution of Board and appointment of Commissioner.—Sec. 8.)

body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of the Board.

(1) For the first three years after the establishment of the Board under section 7, the Board shall consist of the Commissioner as President and the following members, namely :—

- (a) five members to be appointed by the ¹[Provincial Government] of whom only one shall be a Shia and only one shall be a mutwalli ;
- (b) two members to be elected, in the manner prescribed by the ¹[Provincial Government], by the Bengal Legislative ²[Assembly] from among the members of the ²[Assembly] ;
- (c) three Shia members to be appointed by the ¹[Provincial Government] :

Provided that the members referred to in clause (c) shall be members of the Board solely in respect of wakfs created by a Shia.

(2) After the said period of three years the Board shall consist of the Commissioner as President and the following members, namely :—

- (a) four members to be appointed by the ¹[Provincial Government] of whom only one shall be a Shia and only one shall be a mutwalli ;
- (b) three members to be elected, in the manner prescribed by the ¹[Provincial Government], by the Bengal Legislative ²[Assembly] from among the members of the ²[Assembly] ;
- (c) one member to be elected, in the manner prescribed by the ¹[Provincial Government], by the mutwallis of enrolled wakfs ;
- (d) three Shia members to be appointed by the ¹[Provincial Government] :

Provided that the members referred to in clause (d) shall be members of the Board solely in respect of wakfs created by a Shia.

(3) If by such date as the ¹[Provincial Government] may fix, any electoral body referred to in sub-section (1) or sub-section (2) fails to elect a person to be a member of the Board, the ¹[Provincial Government] shall appoint a suitable person in his place and any person so appointed shall be deemed to be a member as if he had been duly elected by such body.

¹See foot-note 2 on p. 481, *ante*.

²This word was substituted for the word " Council " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter II.—Constitution of Board and appointment of Commissioner.—Secs. 9—12.)

9. Every member of the Board shall be a person professing Islam. Members of the Board to be Muslims.

10. (1) Every member of the Board shall hold office for a term of five years : Term of office.

Provided that the term of office of a member of the Board referred to in sub-section (1) of section 8 shall be three years.

(2) A member of the Board, notwithstanding the expiration of his term of office, shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

(3) A person ceasing to be a member by reason of the expiration of his term of office, shall, if otherwise qualified, be eligible for re-appointment or re-election.

(4) If any mutwalli as such appointed, or any member of the Bengal Legislative ¹[Assembly] as such elected, to be a member of the Board ceases to be a mutwalli or a member of the Bengal Legislative ¹[Assembly], as the case may be, the ²[Provincial Government] shall by notification in the ³[Official Gazette], declare his place to be vacant :

Provided that an elected member of the Board whose place is declared vacant under this sub-section shall continue as a member of the Board until his successor is elected.

11. The names of the members of the Board shall be published by the ²[Provincial Government] in the ³[Official Gazette]. Appointments and elections to be notified in the Official Gazette.

12. (1) The ²[Provincial Government] may, by notification in the ³[Official Gazette], remove any member of the Board if he— Removal of members.

- (a) refuses to act or becomes incapable of acting as a member of the Board ;
- (b) is declared insolvent ;
- (c) has been or is convicted of any such offence or has been or is subjected by a Criminal Court to any such order as in the opinion of the ²[Provincial Government], implies that he is unfitted to continue to be a member of the Board ;
- (d) without excuse sufficient in the opinion of the ²[Provincial Government], is absent without the consent of the Board from more than six consecutive meetings of the Board.

¹See foot-note 2 on p. 484, ante.

²See foot-note 2 on p. 481, ante.

³See foot-note 2 on p. 482, ante.

(Chapter II.—Constitution of Board and appointment of Commissioner.—Secs. 13—18.)

(2) The ¹[Provincial Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

Resignation of members.

13. A member of the Board may resign his office by giving notice in writing to the ¹[Provincial Government]; and, on such resignation being accepted, shall be deemed to have vacated his office.

Casual vacancies.

14. When the place of an appointed or elected member of the Board is declared vacant under sub-section (4) of section 10 or becomes vacant by his removal, resignation or death, a new member shall be appointed or elected as the case may be in the manner provided in section 8, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided in section 8.

President of meetings of the Board.

15. (1) The Commissioner, or in his absence a member elected by the members present at a meeting of the Board, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes.

(2) The presence of at least three members shall be necessary to form a quorum at a meeting of the Board.

The Commissioner of Wakfs.

Appointment of the Commissioner.

16. The Commissioner of Wakfs shall be a person professing Islam, and shall be appointed by the ¹[Provincial Government] by notification in the ²[Official Gazette]. He shall ordinarily be appointed for five years, and shall be eligible for re-appointment.

The Commissioner to be a wholetime officer.

17. The Commissioner, during his term of office, shall not hold any other salaried post or the office of a mutwalli, and, subject to any exceptions permitted by the ¹[Provincial Government], shall devote his whole time and attention to his duties under this Act.

Remuneration of the Commissioner.

18. The Commissioner shall receive such monthly salary as may be fixed by the ¹[Provincial Government].

¹See foot-note 2 on p. 481, ante.

²See foot-note 2 on p. 482, ante.

of 1934.]

(Chapter II.—Constitution of Board and appointment of Commissioner.—Secs. 19—24.)

19. (1) The ¹[Provincial Government] may, after consultation with the Board, grant leave of absence to the Commissioner or depute him to other duties for such period as it thinks fit. Leave of absence or deputation of the Commissioner.

(2) The allowance (if any) to be paid to the Commissioner while absent on leave or deputation shall be such amount as may be fixed by the ¹[Provincial Government].

20. (1) Whenever the Commissioner is granted leave of absence or deputed to other duties, the ¹[Provincial Government] may appoint a person to act as Commissioner. Appointment, etc., of acting Commissioner.

(2) The salary of any person appointed to act as Commissioner shall be fixed by the ¹[Provincial Government].

21. If at any time it appears to the ¹[Provincial Government] that the Commissioner has shown himself to be unsuitable for his office, or has been guilty of misconduct or neglect which renders his removal expedient, it may, by notification in the ²[Official Gazette], declare that the Commissioner shall cease to hold such office. Removal of the Commissioner.

22. The Commissioner shall be a corporation sole by the name of "the Commissioner of Wakfs" and shall have perpetual succession and an official seal and shall by the said name sue and be sued. Commissioner to be a corporation sole.

Officers and servants.

23. The Board, with the previous sanction of the ¹[Provincial Government], may from time to time determine the number, designations and grades of the officers and servants (other than employees who are paid by the day) whom the Board considers it necessary to employ for the purposes of this Act and the amount and nature of the salary, fees and allowances to be paid to each such officer and servant. Strength and remuneration of staff.

24. The power of appointing, promoting, and granting leave to officers and servants of the Board and reducing, suspending or dismissing them for misconduct, shall be vested in the Commissioner. Powers of appointment, etc., vested in the Commissioner.

Provided that the Commissioner shall not appoint any person to a post the maximum monthly pay of which exceeds one hundred rupees except with the approval of the Board :

Provided further that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Commissioner may appeal to the Board, whose decision shall be final.

¹See foot-note 2 on p. 481, *ante*.

²See foot-note 2 on p. 482, *ante*.

(Chapter II.—Constitution of Board and appointment of Commissioner.—Chapter III.—Functions of the Commissioner and the Board.—Secs. 25—27.)

Office.

Office of the
Commissioner
and the Board.

25. The office of the Commissioner and the Board shall be situated in Calcutta.

Travelling
allowance.

26. There shall be paid to the Commissioner, members, officers and servants of the Board allowances for attendance at meetings of the Board and for journeys undertaken in the discharge of their duties under this Act at such reasonable rates as may, from time to time, be allowed by the Board with the previous sanction of the ¹[Provincial Government].

CHAPTER III.

FUNCTIONS OF THE COMMISSIONER AND THE BOARD.

General powers
and duties.

27. Subject to the provisions of this Act and of the rules made by the ¹[Provincial Government] thereunder—

(1) the functions of the Commissioner shall include—

- (a) investigating ²[and determining] the nature and extent of wakfs and wakf property, and calling from time to time for accounts, returns and information from mutwallis ;
- (b) ensuring that the income and other property of wakfs are applied to the objects and for the purposes and for the benefit of any class of persons for which such wakfs were created or intended ;
- (c) giving directions for the proper administration of wakfs ;
- (d) keeping in his custody the particulars and all other information relating to wakfs-al-al-aulad ;
- (e) generally, doing all such acts as may be necessary for the due control, maintenance and administration of wakfs ;

(2) the functions of the Board shall include—

- (i) in the absence of any directions by the wakif or any lawful authority, declaring what proportion of the income or other property of the wakf shall be allocated to any particular object of the wakf ;

¹See foot-note 2 on p. 481, ante.

²These words were inserted by s. 2 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV. of 1935).

The Bengal Wakf Act, 1934.

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.—Secs. 28—31.)

- (ii) declaring in what manner any surplus income of a wakf shall be utilised ;
- (iii) constituting committees, where necessary, for the administration of wakfs ;
- (iv) exercising and performing such other powers and duties as are expressly conferred or imposed on the Board by or under this Act ;
- (v) generally, advising the Commissioner in the exercise and the performance of his powers and duties under this Act.

28. The Commissioner and the Board in exercising their powers under this Act in respect of any wakf shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Islamic law :

The Commissioner and the Board to carry out purposes of wakfs but may revise in-operative provisions.

Provided that in furtherance of the objects of the wakf or in the interest of the beneficiaries the Board may revise any provision in the wakf deed which has become inoperative or impossible of execution owing to efflux of time or changed conditions.

29. The Board may, from time to time, authorize the Commissioner to exercise and perform, subject to the control of the Board, any of the powers and duties conferred or imposed on the Board by or under this Act.

Commissioner to perform certain functions authorized by the Board.

30. Subject to any rules made by the ¹[Provincial Government] in this behalf, the Commissioner, with the approval of the Board, may exercise all or any of the powers conferred on him by this Act through the Commissioners of the Divisions or the Collectors of the districts in which the wakf property concerned is situated or through any other person whom he may appoint for such purpose and may from time to time delegate any of his powers to such Commissioners, Collectors or other persons as aforesaid and may at any time revoke such delegation.

Exercise of powers through Commissioners of Divisions and Collectors.

31. The Commissioner may at any time consult the Board in regard to any matter connected with the discharge of his functions under this Act.

Power of Commissioner to consult the Board.

¹See foot-note 2 on p. 481, ante.

(Chapter III.—Functions of the Commissioner and the Board.—Secs. 32—34.)

Application for inquiry or audit of accounts.

32. In the case of a wakf-al-al-aulad, a beneficiary or any person entitled under the wakf deed to receive pecuniary or other material benefits either on his own account or on behalf of a religious or charitable institution, and in the case of any other wakf, any person interested may make an application to the Commissioner supported by an affidavit to institute an inquiry relating to the administration of a wakf or for the examination and audit of the accounts of a wakf, and the Commissioner, on receipt of such application and the prescribed fee, and on being satisfied from facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, shall take such action thereon as he thinks fit :

Provided that an application for the examination and audit of accounts shall not be made in respect of accounts relating to a period more than three years prior to the date of such application.

Power to summon witnesses and compel the production of documents.

33. For the purposes of any inquiry under this Act the Commissioner or any person authorized by him in this behalf shall have the power to summon and enforce the attendance of witnesses including the parties interested and to compel the production of documents by the same means, and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Act V
of 1908.

Protection of wakfs-al-al-aulad if mismanaged.

34. (1) If after an inquiry under section 32 the Commissioner is of opinion that the affairs of any wakf-al-al-aulad have been mismanaged to such an extent as to make it desirable for the protection of the wakf property or in the interest of the beneficiaries that the wakf should be subjected to greater control and supervision, he may recommend to the ¹[Provincial Government] that such wakf shall for a specified period be subject to the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad.

(2) After considering any recommendation of the Commissioner under sub-section (1), the ¹[Provincial Government] may, if it thinks fit, by notification in the ²[Official Gazette], direct that for such period as may be specified therein the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad shall so far as possible apply to the wakf to which the recommendation relates and thereupon, notwithstanding anything contained in this Act, these provisions shall apply accordingly.

¹See foot-note 2 on p. 481, ante.

²See foot-note 2 on p. 482, ante.

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.—Secs. 35—37.)

35. The Commissioner shall be bound to comply, as far as possible, with any request made by the Board for the supply of any information or the production of any document relating to a wakf or for the summoning of any witness whose attendance may be required :

Information required by the Board.

Provided that in the case of a wakf-al-al-aulad the information or document or the attendance of the witness is required for the due performance of any duty of the Board under this Act in relation to such wakf-al-al-aulad.

36. Notwithstanding anything contained in this Act the Commissioner shall have no power to require any information or documents in respect of a wakf from any stranger to the wakf.

Bar to requisition of information or documents from a stranger to the wakf.

37. (1) Any mutwalli may apply by petition to the Commissioner for the opinion, advice or direction of the Commissioner on any question affecting the management or administration of the wakf property and the Commissioner shall give his opinion, advice or direction, as the case may be, thereon :

Power of mutwalli to apply for directions.

Provided that the Commissioner, if he cannot suitably dispose of the question, may refer the mutwalli to the Court of the District Judge having local jurisdiction over the place where the wakf property or any part thereof is situated or to any other Court empowered in this behalf by the ¹[Provincial Government] and if the mutwalli thereafter applies by petition to such Court, the Court shall give its opinion, advice or direction in the manner provided in sub-sections (2) and (3).

(2) The Commissioner on receiving a petition under sub-section (1) may either give his opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the wakf, or to be published for information, in such manner as he thinks fit.

(3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned the Commissioner, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

¹See foot-note 2 on p. 481, ante.

(Chapter III.—Functions of the Commissioner and the Board.—Secs. 38—41.)

(4) Every mutwalli acting upon or in accordance with the opinion, advice or direction given by the Commissioner or the Court, as the case may be, shall be deemed, so far as his own responsibility is concerned, to have discharged his duties as a mutwalli in the matter in respect of which the petition was made :

Provided that nothing herein contained shall indemnify any mutwalli for any act done in accordance with such opinion, advice or direction if such mutwalli has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

Creation of
reserve fund.

38. (1) For the purpose of making provision for the payment of rent and of revenue, cess, rates and taxes due to the Government or to any local authority, for the discharge of the expenses of repairs of the wakf property and for the preservation of the wakf property the Board may direct the creation and maintenance in such manner as it may think fit, of a reserve fund from the income of a wakf other than a wakf-al-al-aulad.

(2) The Commissioner may, for the purposes referred to in sub-section (1), at the request of the majority of the beneficiaries of a wakf-al-al-aulad, direct the creation and maintenance, in such manner as he may think fit, of a reserve fund from the income of such wakf.

Power to pay
dues in case of
default by
mutwalli.

39. (1) Where a mutwalli refuses to pay or does not pay any revenue, cess, rates and taxes due to the Government or any local authority, the Commissioner may discharge the dues from the Wakf Fund and then proceed to recover the same from the wakf property and may also recover damages at twelve and a half per cent. of the dues from the mutwalli.

(2) Any sum of money due under sub-section (1) shall be recoverable as a public demand.

Power to
appoint a
mutwalli in
certain cases.

40. In the case of any wakf of which there is no mutwalli or where there appears to the Board to be an impediment to the appointment of a mutwalli the Board, subject to any order of a competent Court, may appoint for such period as it thinks fit a person to act as mutwalli.

Appointment of
official
mutwalli.

41. (1) The Board may appoint an official mutwalli.

(2) Any intending wakif may, with the permission of the Commissioner and subject to such conditions as to remuneration and other matters as the Commissioner may fix, appoint the official mutwalli as the mutwalli of his wakf, and the official mutwalli shall thereafter accept the office.

The Bengal Wakf Act, 1934.

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.

—Chapter IV.—Enrolment of Wakfs.—Secs. 42—44.)

42. (1) The Commissioner may grant inspection and copies of proceedings or other records of the Board or the Commissioner on payment of such fees as may be prescribed by the Board and subject to such conditions as he may determine. Copies shall be certified by the Commissioner, or by such officer as may be authorised in that behalf by the Commissioner, in the manner provided in section 76 of the Indian Evidence Act, 1872.

Inspection of records and grant of copies.

Act I of 1872.

(2) Any person interested in a wakf other than a wakf-al-alaulad shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(3) In the case of a wakf-al-alaulad a beneficiary shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(4) In the case of any other wakf, a stranger to the wakf shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf :

Provided that the Commissioner shall not grant such permission without consulting the mutwalli of the wakf.

43. The Commissioner may, from time to time, extend

Extension of time for

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*After section 43, insert the following section:—

"43A. (1) The provisions of section 36 of the Legal Practitioners Act, 1879, shall, subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts, to the exclusion of touts included in the list from the precincts of the office of the Commissioner and to the arrest, detention, trial and punishment of such touts.

Application of section 36 of Act XVIII of 1879 to touts in office of the Commissioner.

(2) The Commissioner shall, for the purposes of the said section 36, be deemed to be a Civil Court and an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section 'tout' has the same meaning as in section 3 of the Legal Practitioners Act, 1879."

(Inserted by Ben. Act V of 1942, section 16.)

[No. 23, dated the 14th July 1942.]

*This correction shall not be made until section 16 of Ben. Act V of 1942 is brought into force.

(Chapter IV.—Enrolment of wakfs.—Sec. 44.)

(3) An application for enrolment shall be made in such form and manner and at such place as the Commissioner may prescribe and shall contain the following particulars so far as possible :—

- (a) a description of the wakf properties sufficient for the identification thereof ;
- (b) the gross annual income from such properties ;
- (c) the amount of the Government revenue and cesses, and of all rents and taxes annually payable in respect of the wakf properties ;
- (d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties based on such details as are available ;
- (e) the amount set apart under the wakf for—
 - (i) the salary of the mutwalli and allowances to individuals ;
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ; and
 - (iv) any other purposes ;
- (f) any other particulars prescribed by the Commissioner.

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) On receipt of an application for enrolment, the Commissioner may before enrolling the wakf make such inquiries as he thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property the Commissioner shall, before enrolling the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(6) In the case of wakfs created before the date on which this section comes into force application for enrolment shall be made within six months from that date and in the case of wakfs created after that date within six months from the date of the creation of the wakf :

Provided that in the case of a testamentary wakf application for enrolment shall be made within six months from the date on which this section comes into force or from the date of the death of the testator, whichever event happens last.

(7) Every application made under sub-section (2) shall be written in the English or Bengali language, and shall

of 1934.]

(Chapter IV.—Enrolment of wakfs.—Secs. 45—47.)

Act V of
1908.

be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

If the applicant omits or refuses on notice to sign or verify the application, a note to that effect shall be made in the register maintained under section 45.

45. The Commissioner shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds and the following particulars :—

Register of
wakfs.

- (a) the class of the wakf ;
- (b) the name of the mutwalli ;
- (c) the rule of succession to the office of mutwali under the wakf deed or by custom and usage ;
- (d) particulars of all wakf properties and all title deeds and documents relating thereto ;
- (e) particulars of the scheme of administration and the scale of expenditure at the time of enrolment ; and
- (f) such other particulars as the Commissioner may prescribe.

46. The Commissioner on his own motion or on the petition of any person interested verified in the manner referred to in sub-section (7) of section 44 may direct a mutwalli to apply for the enrolment of a wakf or to supply any information regarding a wakf or may himself collect such information and may cause any wakf to be enrolled or may at any time amend the register of wakfs.

Power to cause
enrolment of
wakf and to
amend register.

46A. Any question whether a particular property is wakf property or not or whether a wakf is wakf-al-al-aulad or not shall be decided by the Commissioner whose decision, unless revoked or modified by a competent Court, shall be final, and any decision of any such question made before or after the commencement of the Bengal Wakf (Amendment) Act, 1935, by a person appointed by the [Provincial Government] under sub-section (1) of section 2 of this Act shall be deemed to have been made by the Commissioner under this section.

Decision if a pro-
perty is wakf
property or a
wakf is wakf-al-
al-aulad.

Ben. Act
IV of 1936.

47. (1) In the case of any change in the management of an enrolled wakf due to the death or retirement or removal of the mutwalli, the incoming mutwalli shall forthwith, and any other person may, notify the change to the Commissioner.

Notifications
of change in
enrolled wakfs.

(2) In the case of any other change in any of the particulars mentioned in section 44, the mutwalli shall within six months from the occurrence of the change notify such change to the Commissioner.

¹Section 46A was inserted by s. 3 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1936).

²See foot-note 2 on p. 481, *ante*.

The Bengal Wakf Act, 1934.

[Ben. Act XIII]

(Chapter V.—Wakf accounts.—Secs. 48, 49.)

CHAPTER V.

WAKF ACCOUNTS.

Submission
of accounts of
wakfs.

48. (a) Before the fifteenth day of July next following the date on which the application referred to in section 44 has been made and thereafter before the fifteenth day of July in every year, every mutwalli of a wakf other than a wakf-al-al-aulad shall prepare and furnish to the Commissioner a full and true statement of accounts, in such form and language and containing such particulars as may be prescribed by the Board of all monies received or expended by the mutwalli on behalf of the wakf during the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf.

(b) Such statement shall also contain the following particulars—

- (i) any change which may have taken place since the application for enrolment or since the submission of the last annual statement, as the case may be, in the extent, nature or quality of the wakf properties, including any transfer or transaction affecting such properties ;
- (ii) the amount of the liabilities, if any, of the wakf on account of outgoings such as rent, revenue, cesses, rates, taxes, salaries, and allowances, and on account of all other matters ;
- (iii) any other particulars which the Board may require.

Audit of
accounts of
wakfs.

49. (1) The accounts of wakfs submitted to the Commissioner under section 48 shall be audited and examined annually or at such other intervals as the Board may determine by an auditor appointed by the Board.

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the Commissioner :

Provided that the auditor may submit an *interim* report at any time if he thinks fit.

of 1934.]

(Chapter V.—*Wakf accounts*.—Chapter VI.—*Statements of wakfs-al-al-aulad*.—Secs. 50—52.)

(4) The report of the auditor shall among other things specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report. The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(5) The cost of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

50. The Commissioner shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as he thinks fit.

Commissioner to pass orders on auditor's report.

51. (1) Every sum certified to be due from any person by an auditor in his report under section 49 unless such certificate is modified or cancelled by the Commissioner by an order made under section 50, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Commissioner.

Sums certified due recoverable as public demands.

(2) If such payment is not made in accordance with the provisions of sub-section (1) the sum payable shall be recoverable as a public demand.

CHAPTER VI.

STATEMENTS OF WAKFS-AL-AL-AULAD.

52. (1) Before the 15th day of July next following the day on which the application referred to under section 44 has been made and thereafter before the 15th day of July every year, every mutwalli of a wakf-al-al-aulad shall prepare and furnish to the Commissioner a true statement in respect of the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case may be, in respect of that portion of the said period during which the provisions of this Act have been applicable to the wakf, containing the following particulars :—

Statements of wakfs-al-al-aulad.

(i) the gross income from the wakf properties ;

(Chapter VII.—Transfer of wakf property.—Sec. 53.)

- (ii) the amount of the Government revenue and cesses and of all rents and taxes paid in respect of the wakf properties ;
- (iii) the expenses incurred in the realization of the income of the wakf properties ;
- (iv) the amount paid under the wakf for—
 - (a) the salary of the mutwalli and allowances to individuals ;
 - (b) purely religious purposes ;
 - (c) charitable purposes ; and
 - (d) any other purposes.

(2) If the Commissioner has reason to doubt the accuracy of the statement submitted under sub-section (1) he may after examining the statement call for the explanation of any person in regard to such statement and shall pass such orders on such statement as he thinks fit.

CHAPTER VII.

TRANSFER OF WAKF PROPERTY.

Bar to transfer of immovable property of a wakf.

53. (1) Except as provided in sub-sections (2), (3) and (4) no transfer by a mutwalli of any immovable property of a wakf by way of sale, gift, mortgage or exchange or by way of lease for a term exceeding five years shall be valid without the previous sanction of the Commissioner.

(2) Where such transfer is made under an express power conferred by the wakf deed the previous sanction of the Commissioner shall not be necessary, but a notice of the proposed transfer in such form and containing such particulars as may be prescribed by the Board shall be sent by the mutwalli to the Commissioner one month before the transfer is made.

(3) Nothing in sub-section (1) shall apply to any such transfer made for the preservation of the wakf property if a certificate is obtained from the Commissioner within six months from the date of the transfer that such transfer was proper and necessary.

(4) Nothing in this section shall apply to any lease of land by a mutwalli for the purpose of cultivation by the lessee or by members of his family or by servants or labourers or with the aid of partners.

of 1934.]

(Chapter VII.—*Transfer of wakf property.*—Chapter VIII.—*Mutwallis.*—Secs. 54—57.)

54. A mutwalli may apply to the Commissioner for sanction to transfer under sub-section (1) of section 53 or for a certificate of transfer under sub-section (3) of that section, and the Commissioner after making such inquiry and giving notice to such persons in such manner as he thinks fit and hearing them if they desire to be heard may accord sanction to such transfer on such terms and conditions as he may in his discretion impose or may grant the necessary certificate, as the case may be.

Power to Commissioner to grant sanction to, and certificate of, transfer.

CHAPTER VIII.

MUTWALLIS.

55. Every mutwalli, unless there is anything to the contrary in the wakf deed, shall invest in such manner as may be approved by the Board any of the wakf property which consists of money which cannot be applied immediately or at an early date to the purposes of the wakf and shall, with the sanction of the Board, convert any of the wakf property which is of a wasting nature and invest the proceeds in such manner as may be approved by the Board.

Mutwalli to convert property and invest money in certain cases.

56. Notwithstanding anything contained in the wakf deed every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 44 or any accounts under section 48 or any statements under section 52 or any information or documents required by the Commissioner or a person authorized by the Commissioner.

Mutwalli entitled to pay certain costs from Wakf Fund.

57. (1) If a mutwalli fails—

Penalties.

- (a) to apply for enrolment ;
- (b) to furnish statements of particulars or of accounts or returns as required by this Act ;
- (c) to supply information or particulars as required by the Board or the Commissioner or a person authorized by the Board or the Commissioner ;
- (d) to allow inspection of wakf properties, accounts, or records, or deeds and documents relating thereto, or assist inquiries and investigations, if called upon to do so by the Board or the Commissioner or a person authorized by the Board or the Commissioner ;

(Chapter VIII.—Mutwallis.—Chapter IX.—Finance.—
Secs. 58, 59.)

- (e) to deliver possession of any wakf property if ordered by the Board or the Court ;
- (f) to carry out the directions of the Board or the Commissioner or a person authorized by the Board or the Commissioner ;
- (g) to pay the contribution payable under section 59 ;
- (h) to discharge any public dues ; or
- (i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to five hundred rupees.

(2) If a mutwalli furnishes any statement, return or information referred to in clause (b) or clause (c) of sub-section (1) which he knows or has reason to believe to be false, misleading or untrue in any material particular he shall be punishable with fine which may extend to five hundred rupees.

Removal of
mutwalli.

58. Notwithstanding anything contained in any other law a mutwalli may be liable to removal by a suit under sub-section (1) of section 73 on the ground that he has been fined more than once under section 57.

CHAPTER IX.

FINANCE.

Annual
contributions
payable to the
Board.

59. (1) The mutwalli of every wakf shall pay annually to the Board such contribution not exceeding the rate of five *per centum* of the net available income of the wakf as the Board may, with the sanction of the ¹[Provincial Government], from time to time, determine :

Provided that in the case of a wakf-al-al-aulad the contribution shall be at such rate (not exceeding one-half of the rate payable by other wakfs) of the net available income of the wakf as the Board may, with the sanction of the ¹[Provincial Government], from time to time, determine.

(2) The Board may in the case of any particular wakf and in the interest thereof reduce or remit such contribution, with the sanction of the ¹[Provincial Government], for such time as it thinks fit.

¹See foot-note 2 on p. 481, ante.

of 1934.]

(Chapter IX.—Finance.—Secs. 60, 61.)

(3) Subject to any provisions in the wakf deed the mutwalli may realize the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realizable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits receivable by such person bears to the entire net available income of the wakf:

Provided that, if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution, and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues to ¹[the Crown], and of any other statutory first charge on the wakf property or the income thereof be a first charge on the income of the wakf and shall be recoverable as a public demand.

(5) If a mutwalli realizes the income of the wakf and refuses to pay or does not pay such contribution he shall also be personally liable for such contribution which may be realized from his person or property in the manner aforesaid.

60. (1) The Commissioner, with the approval of the Board and the previous sanction of the ²[Provincial Government] may, for the purpose of giving effect to the provisions of this Act, borrow such sum of money and on such terms and conditions as the ²[Provincial Government] may fix and the Commissioner shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan. Commissioner may borrow money.

(2) Neither the Board nor, except as provided in sub-section (1), the Commissioner shall borrow money upon the security of the Wakf Fund.

61. (1) All monies received by the Board or the Commissioner for the purposes of this Act and all other monies realised under this Act shall form a fund to be called the "Wakf Fund". Wakf Fund.

(2) The ²[Provincial Government] may make rules regulating the payment of monies into the Wakf Fund, the investment by the Board of monies received into that fund and the custody and disbursement of such monies.

(3) The Wakf Fund shall, subject to the provisions of sub-section (2), be under the control of the Board.

¹These words were substituted for the words "the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 481, *ante*.

(Chapter IX.—Finance.—Secs. 62—64.)

Application of
Wakf Fund.**62.** (1) The Wakf Fund shall be applied to—

- (a) payment to the ¹[Provincial Government] of cost of survey of wakf properties under section 2 ;
- (b)^{*} repayment of any loan incurred under section 60 and payment of the interest thereon ;
- (c) payment of the cost of audit of the Wakf Fund ;
- (d) payment of the salary and allowances of the Commissioner and of any person appointed under section 20 to act as Commissioner ;
- (e) payment of travelling allowances to the Commissioner, members, officers and servants of the Board under section 26 ;
- (f) payment of the cost of the establishment employed by the Board ; and
- (g) payment of all expenses incurred by the Commissioner and the Board in the performance of the duties imposed, and the exercise of the powers conferred, by this Act.

(2) If any balance remains after meeting the expenditure referred to in sub-section (1), the Board may use any portion of such balance for the preservation and protection of wakf property.

Accounts of
Wakf Fund.

63. The Board shall keep such accounts of the receipts and disbursements of the Wakf Fund as the ¹[Provincial Government] may prescribe and shall submit the same for examination from time to time by auditors.

Audit of ac-
counts of Wakf
Fund.

64. (1) The accounts of the Wakf Fund shall be audited and examined annually by such auditor as may be appointed by the ¹[Provincial Government].

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the ¹[Provincial Government] :

Provided that the auditor may submit an *interim* report at any time if he thinks fit.

¹See foot-note 2 on p. 481, *ante*.

of 1934.]

(Chapter IX—Finance.—Chapter X.—Judicial proceedings—
Secs. 65—68.)

(4) The report of the auditor shall among other things specify all cases of irregular, illegal or improper expenditure or of failure to recover monies or other property due or of loss or waste of money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report. The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(5) The cost of audit shall be paid from the Wakf Fund.

65. The ¹[Provincial Government] shall examine the auditor's report and may call for the explanation of any person in regard to any matter therein, and shall pass such orders on the report as it thinks fit.

Provincial Government to pass orders on auditor's report.

66. (1) Every sum certified to be due from any person by an auditor in his report under section 64 unless such certificate is modified or cancelled by the ¹[Provincial Government] by an order made under section 65 and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the ¹[Provincial Government].

Sums certified due recoverable as public demands.

(2) If such payment is not made in accordance with the provisions of sub-section (1) the sum payable shall be recoverable as a public demand.

CHAPTER X.

JUDICIAL PROCEEDINGS.

Act V of
1908.

67. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the ¹[Provincial Government] may make rules for the procedure to be followed in all suits or proceedings relating to any wakf or to any wakf property and not involving any claim by or against a stranger to the wakf.

Procedure for trial of certain wakf cases.

68. Where a decree for rent or any other relief claimed under or on behalf of a wakf is passed or such decree is executed by any Court the decretal amount, if any, shall, unless an application for enrolment of the wakf has been made under section 44, or the wakf has been exempted from enrolment under section 4, be paid into the Court passing or executing the decree, as the case may be, and shall be kept in deposit by the Court until an application for enrolment of the wakf has been made under section 44 or the wakf has been exempted from enrolment under section 4.

Deposit of decretal amount in Court in certain wakf cases.

¹See foot-note 2 on p. 481, ante.

(Chapter X.—Judicial proceedings.—Secs. 69—72.)

Bar to
compromise
of suit or
proceeding
without
sanction
of Court.

Notice of suits,
etc., to be
given to the
Commissioner.

69. No suit or proceeding by or against a mutwalli as such in any Court shall be compromised without the sanction of the trying Court.

70. (1) In every suit or proceeding in respect of any wakf property or of a mutwalli as such except a suit or proceeding for the recovery of rent by or on behalf of the mutwalli the Court shall issue notice to the Commissioner at the cost of the party instituting such suit or proceeding.

(2) Before any wakf property is notified for sale in execution of a decree, notice shall be given by the Court to the Commissioner.

(3) Before any wakf property is notified for sale for the recovery of any revenue, cess, rates or taxes due to ¹[the Crown] or to local authority notice shall be given to the Commissioner by the Court, Collector or other person under whose order the sale is notified.

(4) In the absence of a notice under sub-section (1) any decree or order passed in the suit or proceeding shall be declared void, if the Commissioner, within one month of his coming to know of such suit or proceeding, applies to the Court in this behalf.

(5) In the absence of a notice under sub-section (2) or sub-section (3) the sale shall be declared void, if the Commissioner, within one month of his coming to know of the sale, applies in this behalf to the Court, or other authority under whose order the sale was held.

Commissioner
may be made
a party to a suit
or proceeding
regarding
a wakf on his
application.

71. In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person the Commissioner may intervene and shall on his application be added as a party, and shall be entitled to conduct or defend such suit or proceeding on behalf of and in the interest of the wakf.

Commissioner
may institute
suit or
proceeding
regarding
a wakf in
certain cases.

72. If there is no mutwalli or the mutwalli refuses or neglects to act in the matter within a reasonable time, the Commissioner may in his own name institute a suit or proceeding in Court against a stranger to the wakf or any other person for the recovery of any wakf property wrongfully possessed, alienated or leased, to have any wakf property discharged of an encumbrance or obligation wrongfully created or to recover any money belonging to a wakf.

¹See foot-note 1 on p. 501, ante.

of 1934.]

(Chapter X.—Judicial proceedings.—Secs. 73—75.)

XX of
1863.
Act V of
1908.

73. (1) A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863, and in section 92 of the Code of Civil Procedure, 1908, relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Commissioner without obtaining the leave or consent referred to in those Acts.

Institution of suits under section 14 of the Religious Endowments Act, 1863 and section 92 of the Code of Civil Procedure, 1908.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Commissioner without the consent in writing of the Commissioner.

I of 1894.

74. (1) If, in the course of proceedings under the Land Acquisition Act, 1894, it appears to the Collector before an award is made that any property under acquisition is wakf property a notice of such acquisition shall be served by the Collector on the Commissioner and further proceedings shall be stayed to enable the Commissioner to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice.

Proceedings under the Land Acquisition Act, 1894.

(2) Where the Commissioner has reason to believe that any property under acquisition is wakf property he may at any time before an award is made appear and plead as a party to the proceedings.

(3) When the Commissioner has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving an opportunity to the Commissioner to be heard.

75. All costs and expenses incurred by the Commissioner in connection with any suit or proceeding in respect of any wakf or wakf property to which the Commissioner is a party and all costs decreed against the Commissioner by the Court shall be payable out of the funds of such wakf :

Costs in suits or proceedings.

Provided that the Commissioner may, if he thinks fit, meet such costs and expenses from the Wakf Fund and thereafter recover the same from the funds of the wakf concerned.

(Chapter XI.—Amendments and repeal.—Secs. 76—79.)

CHAPTER XI.

AMENDMENTS AND REPEAL.

Insertion of
new section 16A
in Regulation
XIX of 1810.

76. After section 16 of the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810, the following section shall be inserted, namely:— Reg. XIX of 1810.

“16A. Notwithstanding anything contained in this Regulation the functions of the Board of Revenue under this Regulation shall be discharged in respect of any wakf property in Bengal by the Commissioner of Wakfs appointed under the Bengal Wakf Act, 1934: Ben. Act XIII of 1934.

Pages 506 and 507—

Strike out sections 76 and 82, and *insert* the following note, namely:—
(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

Amendment of
section 22 of
Act XX of 1863.

[No. 41, dated the 22nd July, 1947.]
1863, the following proviso shall be added, namely:— XX of 1863.

“Provided that this section shall not so far as it is inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any wakf property in Bengal.”

Insertion of new
section 23A in
Act XX of 1863.

78. After section 23 of the Religious Endowments Act, 1863, the following section shall be inserted, namely:—

“23A. Notwithstanding anything contained in this Act, the powers of the Civil Court to be exercised by the Board of Wakfs in Bengal. 5 and 10 shall be exercised in respect of any wakf property in Bengal by the Board of Wakfs appointed under the Bengal Wakf Act, 1934.”

Amendment of
section 5 of Act
VI of 1890.

79. To section 5 of the Charitable Endowments Act, VI of 1890, the following proviso shall be added, namely:—

“Provided that the powers of the ¹[Provincial Government] under this section for the settlement, modification or substitution of a scheme for the administration of any property shall, in respect of any wakf property in Bengal, be exercised, subject to the approval of the ¹[Provincial Government], by the Board of Wakfs appointed under the Bengal Wakf Act, 1934.”

¹See foot-note 2 on p. 481, ante.

of 1934.]

(Chapter XI.—Amendments and repeal.—Secs. 80—83.)

VI of 1890.

80. After section 6 of the Charitable Endowments Act, 1890, the following sub-section shall be added, namely :—

Amendment of section 6 of Act VI of 1890.

“ (3) An application for the vesting of any property of the nature specified in sub-section (3) of section 4 may, notwithstanding anything contained in this section, be made by the Commissioner of Wakfs appointed under the Bengal Wakf Act, 1934, where such property is under the administration of an official mutwalli or of a mutwalli appointed under section 40 of that Act.”

Ben. Act XIII of 1934.

XIV of 1920.

81. After section 12 of the Charitable and Religious Trusts Act, 1920, the following section shall be added, namely :—

Insertion of new section 13 in Act XIV of 1920.

This Act not to apply to wakf property in Bengal.

“ 13. The provisions of this Act shall not, so far as they are inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any wakf property in Bengal.”

XLII of 1923.

82. The Mussalman Wakf Act, 1923, in its application to Bengal is hereby repealed.

Repeal of Act XLII of 1923.

83. Nothing in this Act or in any repeal effected thereby shall affect— Savings.

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act ; or
- (b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability; or
- (c) anything done or suffered before the commencement of this Act ; or
- (d) any enactment relating to wakfs or their administration which is not expressly repealed by this Act ; or
- (e) any law not inconsistent with this Act.

(Chapter XII.—Rules and by-laws.—Secs. 84, 85.)

CHAPTER XII.

RULES AND BY-LAWS.

Rules.

84. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the exemption of wakfs under section 4 ;
- (b) the manner in which the net available income of a wakf shall be determined ;
- (c) the delegation of powers by the Commissioner to Commissioners of Divisions, to Collectors and to other persons ;
- (d) the budgets, reports, accounts, returns or other information to be submitted by the Board and the Commissioner ;
- (e) the appointment and remuneration of auditors for auditing the accounts of the Wakf Fund ;
- (f) the manner in which the accounts of the Wakf Fund shall be kept, audited and published and the form and contents of the auditors' report ;
- (g) the payment of monies into the Wakf Fund, the investment, custody and disbursement of such monies ;
- (h) the method of election of members under clause (b) of sub-section (1) and clauses (b) and (c) of sub-section (2) of section 8 ;
- (i) the regulation of functions of the Board and the Commissioner referred to in section 27 ;
- (j) the fees payable under section 32 ;
- (k) the procedure in suits and proceedings referred to in section 67 ; and
- (l) the service of notices and requisition under section 89.

(3) All rules made under this section shall be published in the ²[Official Gazette].

By-laws.

85. (1) The Board may, with the previous sanction of the ¹[Provincial Government], from time to time, make by-laws as to—

- (a) the time and place of meetings ;
- (b) the business to be transacted at meetings ;

¹See foot-note 2 on p. 481, ante.

²See foot-note 2 on p. 482, ante.

of 1934.]

(Chapter XIII.—Miscellaneous.—Sec. 86.)

- (c) the period of notice of meetings and the manner in which such notice shall be given ;
- (d) the procedure and conduct of business at meetings ;
- (e) the method of ascertaining the opinion of the Board on any matter without convening a meeting ;
- (f) the books to be kept at the office of the Board ;
- (g) the manner in which the accounts of wakfs shall be kept and audited, the time and place of audit of accounts of wakfs and the form and contents of the auditor's report ;
- (h) the fees for inspection of proceedings and records of the Board and for copies of the same under section 42 ;
- (i) the form of application for enrolment, the further particulars to be contained therein, and the manner and place of enrolment of wakfs under section 44 ;
- (j) the further particulars to be contained in the register of wakfs maintained under section 45 ;
- (k) the form of and the further particulars to be contained in a statement of accounts under section 48 ;
- (l) the form of and particulars to be contained in notices of proposed transfer of immovable property of a wakf under sub-section (2) of section 53.

(2) All by-laws made under this section shall be published in the ¹[*Official Gazette*].

CHAPTER XIII.

MISCELLANEOUS.

86. (1) Any sum of money payable by a mutwalli from the funds of a wakf to the Board or to the Commissioner under this Act including any damages chargeable thereon and costs, if any, incurred shall be recoverable, subject to such rules as may be prescribed by the ²[*Provincial Government*], as a public demand.

Method of recovery of sums realizable as public demands.

(2) The Commissioner shall forward to the Collector a requisition in the form prescribed under the Bengal Public Demands Recovery Act, 1913, under his signature specifying the sum recoverable under this Act as a public demand, and the Collector, on receipt of such requisition shall proceed to recover the sum under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

¹See foot-note 2 on p. 482, ante.

²See foot-note 2 on p. 481, ante.

[Ben. Act XIII of 1934.]

(Chapter XIII.—Miscellaneous.—Secs. 87—93.)

Commissioner and officers and servants to maintain secrecy about particulars of wakfs.

87. Subject to the provisions of this Act the Commissioner and every officer and servant of the Board shall maintain secrecy about the particulars and all other information relating to a wakf which comes into his possession in his capacity as Commissioner or as an officer or servant of the Board.

The Commissioner, auditor, etc. to be deemed public servants.

88. The Commissioner, every auditor and every officer and servant of the Board authorized by the Commissioner or by the Board to do any act by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

Service of notice or requisition.

89. A notice or requisition under this Act may be served on the person named in the notice or requisition either by post or as a summons issued by a Court under the Code of Civil Procedure, 1908, or in such manner as the ¹[Provincial Government] may prescribe.

Act V of 1908.

Attendance before the Board or the Commissioner may be either in person or by an agent.

90. Any mutwalli or other person who is entitled to attend before the Board or the Commissioner, in connection with any proceedings under this Act, may, with the permission of the Board or the Commissioner, as the case may be, attend either in person or through any person authorized by him in writing in that behalf.

Trial of offences.

91. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Indemnity.

92. No suit shall be brought in any Civil or Revenue Court to set aside or modify any order made under this Act and no suit, prosecution or legal proceeding shall lie against the Board or the Commissioner or any other person appointed under this Act for anything which is in good faith done or intended to be done under this Act.

Powers to Provincial Government to remove unforeseen difficulties.

93. If any difficulty arises as to the first constitution of the Board after the commencement of this Act or otherwise in first giving effect to the provisions of the Act, the ¹[Provincial Government], as occasion may require, may, notwithstanding anything contained elsewhere in this Act, within ²[two years] from the date on which this Act in whole or in part first comes into force by order do anything which appears to it to be necessary for the purpose of removing the difficulty.

¹See foot-note 2 on p. 481, ante.

²Those words were substituted for the words "twelve months" by S. 4 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1936).

Bengal Act IV of 1935.

(THE BENGAL WORKMEN'S PROTECTION ACT, 1934.)¹

(21st March 1935)

Page 511—

In sub-section (1) of section 1, for the figure "1934" substitute the figure "1935".

(Substituted by West Bengal Act VII of 1948, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

6 & 7 Geo. V, c. 37;
9 & 10 Geo. V, c. 101.

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Workmen's Protection Act, 1934.

Short title and local extent.

(2) It shall apply in the first instance only to Calcutta and the districts of 24 Parganas, Hooghly and Howrah.

Ben. Act IV of 1866.
Ben. Act II of 1866.
XV of 1908.

Explanation.—"Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908.

2. The ²[Provincial Government] may, by notification in the ³[*Official Gazette*], extend this Act to any area specified in the notification.

Further provision as to extent.

3. Whoever loiters at or near any—

- (a) mine;
- (b) dock, wharf or jetty;

Besetting certain premises with a view to recover debt.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1934, Pt. IV, p. 165; and for report of the Select Committee, see *Calcutta Gazette*, dated the 20th December, 1934, Pt. IV, p. 189; and for proceedings in Council, see the Bengal Legislative Council Proceedings, Vol. XLIV, No. 1, pages 57 and 243.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "*Calcutta Gazette*", *ibid.*

⁴The proviso was omitted by Sch. IV. *ibid.*

[Ben. Act IV of 1935.]

Pages 511-512—

For section 3 substitute the following section:—

“3. (1) Whoever loiters at or near any place where a workman works or receives his wages in a manner or in circumstances indicating that he is so loitering with a view to recover any debt from such workman shall be punished with imprisonment which may extend to six months or with a fine which may extend to two hundred and fifty rupees or with both.

(2) In this section the expression ‘workman’ means a person employed by way of manual labour—

- (a) by a local authority or in a public utility service, or
- (b) in any mine, or
- (c) at any dock, wharf or jetty, or
- (d) in any railway station or yard, or
- (e) in any premises where any manufacturing process, as defined in the Factories Act, 1934, is carried on,

XXV of 1934.

and includes a seaman, as defined in the Workmen's Compensation Act, 1923.

VIII of 1923.

Explanation.—The expression ‘public utility service’ in this section means—

- (a) any railway service; or
- (b) any water transport service; or
- (c) any tramway or motor service; or
- (d) any postal, telegraph or telephone service; or
- (e) any system of public conservancy or sanitation; or
- (f) any industry, business or undertaking which supplies power, light or water to the public, or which the Provincial Government may, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act.”

(Substituted by Ben. Act VI of 1940, section 3.)

[No. 5, dated the 3rd May, 1940.]

Bengal Act IX of 1935.

(THE ALBERT VICTOR LEPER HOSPITAL ACT, 1935.)

CONTENTS.

Section.

- 1 Short title and commencement.**
- 2 Definitions.**
- 3 Incorporation of Trustees.**
- 4 Constitution of the Board.**
- 5 Property to vest in the Board.**
- 6 Hospital Fund.**
- 7 Contribution by Provincial Government.**
- 8 Contribution by Corporation of Calcutta.**
- 9 Repairs to the Hospital.**
- 10 Acquisition of land.**
- 11 Superintendent and establishment.**
- 12 Contributions for pensions, etc.**
- 13 Trustees, officers and servants to be public servants.**
- 14 Returns.**
- 15 Control and supersession of the Board.**
- 16 Dissolution of the Board.**
- 17 Power of Provincial Government to make rules.**
- 18 Power of the Board to make regulations.**
- 19 Rules to be made after previous publication.**
- 20 Notice of suits against the Board, etc.**
- 21 Validation.**
- 22 Classification of Hospital.**

THE SCHEDULE.

Bengal Act IX of 1935.

(THE ALBERT VICTOR LEPER HOSPITAL ACT, 1935.)

(23rd May 1935.)

An Act to provide for the incorporation of Trustees for the Albert Victor Leper Hospital at Gobra in Calcutta and to make provision for other matters in relation thereto.

WHEREAS early in the nineteenth century an asylum was established for the accommodation and medical treatment of lepers ;

AND WHEREAS the said leper asylum after various vicissitudes is now known as the Albert Victor Leper Hospital and is situated at Gobra in Calcutta ;

AND WHEREAS the Hospital is at present a State hospital conducted departmentally by the Government of Bengal, and is under the supervision of a Board of Management, with the Commissioner of the Presidency Division as Chairman, subject to the general control of the Surgeon-General to the Government of Bengal, and is financed through the budget of the Medical Department of that Government ;

AND WHEREAS the site of the Hospital was purchased and buildings were constructed thereon partly from funds provided by the public and partly from funds provided by the Government of Bengal ;

VI of 1890. AND WHEREAS the premises comprising the main building of the Hospital together with certain funds (such premises and funds being set forth in Part I of the schedule) are vested in the Treasurer of Charitable Endowments for Bengal under the provisions of the Charitable Endowments Act, 1890, for the purposes of the Hospital and certain additional premises and funds (set forth in Part II of the schedule) are held by the Local Government for the purposes of the Hospital, and certain other funds and property (set forth in Part III of the schedule) are held by the Official Trustee of Bengal and the Administrator-General of Bengal in trust for certain purposes of the Hospital ;

AND WHEREAS it is expedient to provide for the incorporation of Trustees for the Albert Victor Leper Hospital and to cause the Hospital including its properties and funds to be or become vested in the said Trustees together with

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1934, Pt. IV, p. 183, and for report of the Select Committee; see *ibid*, 1935, Pt. IV, p. 71 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 1, p. 217 and *ibid*, No. 2, p. 74.

(Secs. 1—3.)

power to receive the income and benefit of trusts created for the benefit of the said Hospital and to make provision for other matters in relation to the said Hospital;

AND WHEREAS in pursuance of the provisions of the Charitable Endowments Act, 1890, for the purpose of transferring the said properties and funds mentioned in Part I of the schedule from the Treasurer of Charitable Endowments to the said Trustees a direction will be published by the Local Government in the *Calcutta Gazette* under section 10 of the said Act; VI of 1890.

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows :—

5 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 37;
9 & 10
Geo. V,
c. 101.

Short title
and commence-
ment.

1. (1) This Act may be called the Albert Victor Leper Hospital Act, 1935.

(2) It shall come into force on such date¹ as the ²[Provincial Government] may, by notification, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "the Board" means the Board of Trustees for the Albert Victor Leper Hospital constituted under this Act;
- (2) "Chairman" means the Chairman of the Board;
- (3) "the Hospital" means the Albert Victor Leper Hospital;
- (4) "notification" means a notification published in the ³[*Official Gazette*];
- (5) "the Superintendent" means the Superintendent of the Hospital appointed by the Board under sub-section (1) of section 11; and
- (6) "Trustee" means a member of the Board.

Incorporation
of Trustees.

3. Subject to the provisions of this Act, the entire management and control of the Hospital shall, on and from the date on which this Act comes into force, be vested in a Board to be called "the Trustees for the Albert Victor Leper Hospital" and the Board shall be a body corporate having perpetual succession and a common seal, with power to acquire

¹The Act came into force on the 15th August, 1935, *vid* Notification No. 3217 Metl., dated the 9th August, 1935, published in the *Calcutta Gazette*, dated the 15th August, 1935, Pt. I, p. 1552.

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "*Calcutta Gazette*", *ibid.*

of 1935.]

(Sec 4.)

and hold property both movable and immovable and to contract, and shall by the said name sue and be sued.

4. (1) The Board shall consist of fifteen Trustees, Constitution
of the Board.
namely :—

- (a) the Commissioner of the Presidency Division,
- (b) the District Magistrate of the 24-Parganas,
- (c) the Director of Public Health, Bengal, *ex-officio*.
- (d) the Executive Engineer of the Calcutta Division in which the Hospital is situated,
- (e) the Health Officer of the Corporation of Calcutta,
- (f) two Trustees to be elected by the Corporation of Calcutta from among their Aldermen and Councillors,
- (g) seven Trustees to be appointed by the ¹[Provincial Government], and
- (h) one representative of the British Empire Leprosy Relief Association, Bengal, or of any other association for the treatment and relief of leprosy, to be appointed by the ¹[Provincial Government].

(2) The Commissioner of the Presidency Division shall be, *ex-officio*, Chairman of the Board and the Superintendent shall be, *ex-officio*, Secretary of the Board.

(3) If by such date as may be fixed by the ¹[Provincial Government] the Corporation of Calcutta fails to elect the Trustees to be elected by them under the provisions of clause (f) of sub-section (1), the ¹[Provincial Government] shall appoint suitable persons to be such Trustees, and the persons so appointed shall be deemed to be Trustees as if they had been duly elected by the Corporation.

(4) An elected or appointed Trustee shall, subject to the provisions of this Act, hold office from the date of his election or appointment for a term of five years or thereafter until his successor shall have been elected or appointed, and shall be eligible for re-election or re-appointment; but the ¹[Provincial Government] may, at any time, accept the resignation of any such Trustee.

(5) When the office of an elected or appointed Trustee becomes vacant by his removal, resignation or death, a new Trustee shall be elected or appointed in the manner provided in this section and shall hold office so long as the

¹See foot-note 2 on p. 516, *ibid.*

(Sec. 5.)

Trustee whose place he fills would have been entitled to hold office if such vacancy had not occurred.

Property to
vest in the
Board.

5. (1) The Board shall upon the date of the making under section 10 of the Charitable Endowments Act, 1890, of a direction of the [Provincial Government] for transfer to the Board of the property and funds set forth in Part I of the schedule from the Treasurer of Charitable Endowments (hereinafter referred to as the date of transfer), receive and take possession of the same and shall thenceforth hold the same for the purposes of the Hospital as provided in this Act :

VI of 1890.

Provided that the income of such of the said funds as were created for specific purposes mentioned in Part I of the schedule shall continue to be applied by the Board for such specific purposes.

(2) Upon the date of transfer the property and funds set forth in Part II of the schedule together with all other property and funds [other than those referred to in sub-section (1)] which upon the date of transfer appertain to the Albert Victor Leper Hospital situated at Gobra in Calcutta or are held by or on behalf of the persons then acting as members of the Board of Management of the said Hospital or by any other person for the purposes of the Hospital or for the benefit of the inmates thereof including the right to receive the benefit of the trust funds (either capital or income as the case may be) set forth in Part III of the schedule and the right to receive the benefit of other trust funds (if any) now existing or hereafter to be created in trust for the said Hospital or for the benefit of inmates thereof together also with all equipment, appliances, furniture and accessories belonging to the said Hospital not already transferred under sub-section (1) shall vest in the Board and shall thenceforth be held for the purposes of the Hospital as provided in this Act :

Provided that the income of any funds (including those set forth in Parts II and III of the schedule) which up to the date of transfer have been held in trust for specific purposes in connection with the Hospital shall continue to be applied by the Board for such specific purposes:

Provided also that the Board may in its discretion accept the gift or bequest of any funds given or bequeathed for specific purposes in connection with the said Hospital and apply the same or the income thereof accordingly.

(3) All liabilities which at the date of transfer have been incurred for the purposes of the Albert Victor Leper Hospital by the persons then or theretofore acting as members of the Board of Management of the Hospital shall be deemed to be liabilities of the Board and shall be discharged out of the property and funds vested in the Board.

¹See footnote 2 on p. 512, ante.

of 1935.]

(Secs. 6—9.)

6. (1) There shall be formed for the Hospital a fund **Hospital Fund**, to which shall be credited—

- (i) the sums paid by the ¹[Provincial Government] and the Corporation of Calcutta as contributions under sections 7 and 8 ;
- (ii) all other sums granted by the ¹[Provincial Government] or the Corporation of Calcutta for the purposes of the Hospital ;
- (iii) all sums received by the Board from the Commissioners of any municipality or from any district board as contributions towards the cost of treatment in the Hospital of persons resident within such municipality or district ;
- (iv) all sums levied by the Board for the treatment or accommodation of patients other than indigent patients ;
- (v) all income derived from any endowments or other property owned or managed by the Board for purposes in connection with the Hospital ; and
- (vi) all other sums of money received by the Board for the purposes of the Hospital.

(2) The Hospital Fund shall become vested in the Board, be under its control and shall be held in trust for the purposes of the Hospital.

7. The ¹[Provincial Government] shall, for the purposes of the Hospital, contribute annually to the Board a sum of sixty thousand rupees and may contribute such other sums as the ¹[Provincial Government] may think fit.

Contribution
by Provincial
Government.

Ben.
Act III
of 1923.

8. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, the Corporation of Calcutta shall, for the purposes of the Hospital, contribute annually to the Board a sum of seven thousand rupees and may contribute such other sums as the Corporation may, from time to time, determine.

Contribution by
Corporation of
Calcutta.

9. The ¹[Provincial Government] shall spend annually a sum not exceeding five thousand rupees for the purpose of causing such repairs to be executed to the main and subsidiary buildings of the Hospital as, in the opinion of the ¹[Provincial Government], are necessary :

Repairs to the
Hospital.

Provided that if in three consecutive years less than fifteen thousand rupees is spent for such repairs, the amount of the deficiency below fifteen thousand rupees shall be available for expenditure in the fourth year in addition to the annual sum provided for that year for carrying out such repairs as in the opinion of the ¹[Provincial Government] are necessary.

¹See foot-note 2 on p. 516, ante.

After section 10 insert the following section, namely:—

Acq. of la. "10A. (1) In addition to the powers conferred by section 10 for the acquisition of land, the Board may purchase, take on lease or otherwise acquire any property for the purposes of the Hospital.
Power of Board to purchase, lease and sell properties.

(2) The Board may, with the previous sanction of the Provincial Government, sell, lease, exchange or otherwise dispose of any property vested in or acquired by the Board, if in the opinion of the Board such disposal is necessary in the interest of the Hospital."

Sup and etc. (Inserted by Ben. Act X of 1946, section 2.)

- (a) [No. 40, dated the 31st March, 1947.]
shall appoint a Superintendent of the Hospital who shall be an officer of the Board, and
(b) shall assign to the Superintendent such pay and allowances as the Board thinks fit.

(2) Subject to the provisions of this Act and of any rules made thereunder, the Board shall maintain such staff of officers and servants as may in its opinion be necessary for the Hospital, and shall assign to them such pay and allowances as it thinks fit.

Contribution for pensions, etc.

12. Where any person ²[in the service of the Crown] is appointed as an officer or servant of the Board, the Board shall—

- (a) if his services are wholly lent or transferred, meet in addition to his pay and allowances any * * * contributions towards pensions or gratuities and leave allowances, ⁴[required, by the conditions of his service under the Crown, to be paid by him or on his behalf], and
(b) if he is employed partly ⁵[by the Crown] and partly by the Board, meet such proportion of such pay and allowances ⁶[and contributions] as may be determined ⁷[by the Government concerned.]

Trustees, Officers and servants to be public servants.

13. Every Trustee and every officer and servant of the Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

¹See foot-note 2 on p. 516, ante.

²These words were substituted for the words "in the service of Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "charges prescribed or authorised by any rules for the time being in force under the provisions of section 96B of the Government of India Act regarding" were omitted, *ibid.*

⁴These words were inserted, *ibid.*

⁵These words were substituted for the words "by Government", *ibid.*

⁶These words were substituted for the words "and charges", *ibid.*

⁷These words were substituted for the words "by the Local Govern-

of 1935.]

(Secs. 14, 15.)

14. The ¹[Provincial Government] may call upon the Board to furnish it with any extract from any proceedings of the Board or from any record under the control of the Board, or with any information concerning the administration of the Hospital; and the Board shall thereupon furnish the same without unreasonable delay. Returns.

15. (1) If the ¹[Provincial Government], after such inquiry as it may deem fit, is satisfied— Control and supersession of the Board.

- (a) that any of the duties imposed or powers conferred upon the Board by or under this Act has not been performed or exercised or has been performed or exercised in an imperfect, inefficient or unsuitable manner; or
- (b) that adequate financial provision has not been made for the performance of any such duty or for the proper maintenance of the Hospital;

it may, by order in writing, direct the Board, within such period as may be specified in the order, to make arrangements to the satisfaction of the ¹[Provincial Government] for the proper performance of such duty or for the proper exercise of such power, or to make financial provision to the satisfaction of the ¹[Provincial Government] for the performance of such duty or for the maintenance of the Hospital, as the case may be; and the Board shall thereupon comply with such direction.

(2) On the failure of the Board to comply with any such direction, the ¹[Provincial Government] or any person appointed by the ¹[Provincial Government] in this behalf may perform such duty or exercise such power or make such provision, as the case may be, and the ¹[Provincial Government] may attach the Hospital Fund or any portion thereof and may apply the same to meet any charge incurred in the performance of such duty or the exercise of such power, or in the making of such provision, as the case may be.

(3) On the repeated failure of the Board to comply with such directions, or if the Board otherwise exceeds or abuses its powers, the ¹[Provincial Government] may, by notification, declare the Board to be incompetent or to have exceeded or abused its powers, as the case may be, and direct that the Board shall be superseded for such period as may be specified in the notification.

(4) When the Board is superseded under the provisions of sub-section (3)—

- (a) all Trustees shall, from the date of the publication of the notification under that sub-section, vacate their offices as Trustees;

¹See foot-note 2 on p. 516, *ante*.

(Secs. 16, 17.)

- (b) all powers and duties of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the ¹[Provincial Government] may appoint in this behalf;
- (c) all funds and other property vested in the Board shall, during the period of supersession, vest in ²[the Crown for the purposes of the Province]; and
- (d) before the expiration of the period of supersession, Trustees shall be elected and appointed in the manner provided in section 4, for the purpose of reconstituting the Board.

Pages 521-522—

In sections 15 and 16, for the words "the Crown for the purposes of the Province" substitute the words "the State Government".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

Power of
Provincial
Government
to make rules.

17. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) prescribing the circumstances in which and the authority by which a Trustee elected or appointed under section 4 may be removed;
- (b) fixing the minimum number of meetings of the Board during any year;
- (c) requiring the maintenance by the Board or the Managing Committee of the Board of a record of all business transacted, the preparation of an annual report and the submission of copies of such documents to the ¹[Provincial Government], the Corporation of Calcutta and to any other specified authority;
- (d) defining the powers of the Board, the Managing Committee of the Board, and the Chairman, respectively, to enter into contracts binding on the Board, and the manner in which such contracts shall be executed;
- (e) sanctioning works in connection with the Hospital and prescribing the preparation of estimates of such works before work is commenced and the authority by which such estimate shall be sanctioned;

¹See foot-note 2 on p. 516, *ante*.

²These words were substituted for the words "the Local Government on behalf of His Majesty" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 17.)

- (f) prescribing the procedure to be observed in calling for and considering tenders ;
- (g) requiring the preparation of schedules of the staff of officers and servants of the Board ;
- (h) defining the powers of the Board, the Managing Committee of the Board, the Chairman and the Superintendent, respectively, in respect of the appointment, promotion and dismissal of officers and servants of the Board, and in respect of the creation and abolition of appointments of such officers or servants ;
- (i) regulating the grant of leave to officers and servants of the Board, and the payment of leave allowances to such officers and servants, and the remuneration to be paid to any person appointed to act for any officer or servant to whom leave is granted ;
- (j) regulating the payment of pensions, gratuities, compassionate allowances and travelling allowances to officers and servants of the Board ;
- (k) prescribing the establishment and maintenance of a provident fund for the officers and servants of the Board, and the deduction of subscriptions to such provident fund from the pay and allowances of such officers or servants, other than ¹[servants of the Crown] whose services have been lent or transferred to the Board ;
- (l) prescribing the preparation of budget estimates of the annual receipts and expenditure of the Hospital Fund and of supplementary estimates of expenditure not included in the Budget estimates, and the manner in which such estimates shall be sanctioned and published ;
- (m) defining the powers of the Board, the Managing Committee of the Board, the Chairman and the Superintendent, respectively, in regard to the expenditure of the Hospital Fund, whether provision has or has not been made in the budget estimates or by re-appropriation for such expenditure, and in regard to the re-appropriation of estimated savings in the budget estimates of expenditure ;
- (n) prescribing the maintenance of accounts of the receipts and expenditure of the Hospital Fund and providing for the audit of such accounts ;

¹These words were substituted for the words " Government servants " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 18.)

- (o) prescribing the manner in which payments are to be made by or on behalf of the Board, and the officers by whom orders for making deposits or investments or for withdrawals or disposal of the Hospital Fund shall be signed ; and
- (p) determining the custody in which the current account of the Hospital Fund shall be kept, and the bank or banks at which surplus monies at the credit of the Hospital Fund may be deposited at interest, and the conditions on which such monies may be otherwise invested.

**Power of the
Board to make
regulations.**

18. Subject to any rules made under section 17, the Board may, with the previous sanction of the ¹[Provincial Government], make regulations to provide for all or any of the following matters, namely :—

- (a) the constitution of a Managing Committee and the delegation thereto of any powers exercisable under this Act by the Board ;
- (b) prescribing the method of appointment, removal and replacement and the term of office of members of the Managing Committee, and the filling of vacancies therein ;
- (c) the appointment of the dates, times and places for meetings of the Board and the Managing Committee, and the procedure to be observed at such meetings ;
- (d) determining the amount and nature of the security, if any, to be demanded from officers or servants of the Board, and the circumstances in which such security may be demanded ;
- (e) determining the times at which, and the circumstances in which, payments may be made out of the provident fund, and the conditions on which such payments shall relieve the fund from further liability ;
- (f) determining the contribution, if any, payable from the Hospital Fund to the provident fund ;
- (g) regulating generally all matters incidental to the provident fund and the investment thereof ; and
- (h) defining the powers and duties of the Secretary of the Board.

¹See foot-note 2 on p. 516, *ante*.

The Albert Victor Leper Hospital Act, 1935.

of 1935.]

(Secs. 19—22.)

19. All rules made under section 17 shall be made subject to the condition of previous publication, and shall be published in the ¹[*Official Gazette*], and on such publication shall have effect as if they were enacted in this Act.

Rules to be made after previous publication.

20. (1) No suit shall be instituted against the Board or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any such officer or servant, in respect of any act done or purporting to be done under this Act or any rule or regulation made hereunder or in respect of any alleged neglect or omission to perform any duty enjoined by this Act until the expiration of one month next after notice in writing has been delivered or left at the office of the Board or at the office or place of abode of such officer or servant, stating the cause of action, the name and place of abode of the person who intends to institute the suit and the relief which he claims and the plaint must contain a statement that such notice has been so delivered or left ;

Notice of suits against the Board, etc.

and, unless such notice be proved, the Court shall find for the defendant.

(2) Every such suit shall be commenced within six months next after the accrual of the cause of action, and not afterwards.

(3) When the suit is for damages, tender of amends, if any, made before the suit is instituted may, in lieu of or in addition to any other plea, be pleaded. If the suit was commenced after the tender or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, the defendant shall be entitled to full costs of the suit after the tender or payment.

21. No act done or proceedings taken under this Act shall be questioned on the ground merely of—

Validation.

- (a) the existence of any vacancy or any defect in the constitution of the Board or the Managing Committee ; or
- (b) any person having ceased to be a Trustee ; or
- (c) any omission, defect or irregularity not affecting the merits of the case.

III of
1898.

22. For all the purposes of the Lepers Act, 1898, the Hospital shall be deemed to be a Leper Asylum appointed by the ²[Provincial Government].

Classification of Hospital.

¹See foot-note 3 on p. 516, *ante*.

²See foot-note 2 on p. 516, *ante*.

(The Schedule.)

[Ben. Act IX

THE SCHEDULE.

(See section 5.)

PART I.

Property and funds held by the Treasurer of Charitable Endowments, Bengal.

Premises Nos. 18, 19, 20 and 21, Gobra Road South in Calcutta (Hospital Main Block), being all that piece or parcel of revenue-free land containing an area of 20 bighas 7 cottahs 8 chittacks more or less situate on the south side of Gobra Road at the corner of Asgar Mistry Lane in the North Division of the Town of Calcutta and bearing Municipal Nos. 18, 19, 20 and 21 and being Holding No. 133 in Sub-Division G of Division 4 in Estate Dibi Bancha.

Pages 526-527—

In the Schedule for the words "Eastern Bengal Railway" substitute the words "East Indian Railway".

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

Together with all buildings, structures and erections standing or being on the said land, which said premises and buildings are commonly known as the Albert Victor Leper Hospital.

And together with all rights, easements and appurtenances whatsoever belonging or attached or appurtenant to the said land, buildings, structures and erections or held or enjoyed therewith.

Together also with all equipments, appliances, furniture and accessories belonging to the said Hospital.

Funds.—(a) *The Albert Victor Leper Asylum Maintenance Fund* of Rs. 20,500 (face value) of 3½ per cent. Government Promissory notes, held under Notification No. 575T.M., dated 29th September 1898—for general maintenance of the Hospital.

(b) *The Tincowri Dassi Fund* of Rs. 29,500 (face value) of 3½ per cent. Government Promissory notes held under Notification No. 2174Medl., dated 29th August, 1919—the income to be applied in adding to the comforts of the inmates of the said Asylum in matters which are not fit subjects for expenditure from the general revenue thereof or applicable thereto.

(c) *The Joy Chandi Dutt Fund* of Rs. 10,000 (face value) of 3½ per cent. Government Promissory notes held under Notification No. 914, dated 26th March, 1923—the income to be applied in the same manner as income of Tincowri Dassi Fund abovementioned.

of 1935.]

(*The Schedule.*)

PART II.

Premises and funds held by or under the control of Government.

Premises No. 32, Gobra Road South in Calcutta (Superintendent's quarters), being all that piece or parcel of revenue-free land containing an area of 5 *bighas* 9 *cottahs* 7 *chittaks* 5 square feet more or less, situate on the south side of Gobra Road South in the North Division of the Town of Calcutta and bearing Municipal No. 32 and being Holding No. 5 in Subdivision G of Division 4 in Estate Dihi Panchannagram and bounded as follows, namely, on the *north* by Gobra Road, on the *east* partly by premises No. 31, Gobra Road, and partly by Eastern Bengal Railway land, on the *south* partly by premises No. 6, Dihi Serampore Road, and partly by Eastern Bengal Railway land and on the *west* partly by premises No. 6, Dihi Serampore Road, and partly by premises No. 5, Dihi Serampore Road.

Together with all buildings, structures and erections standing or being on the said land, which said premises and buildings are known as the Superintendent's quarters.

Together also with all rights, easements and appurtenances whatsoever belonging or attached or appurtenant to the said land, buildings, structures and erections or held and enjoyed therewith.

Premises No. 32-1, Dihi Serampore Road in Calcutta (Sub-Assistant Surgeon's quarters) being all that piece or parcel of revenue-free land containing an area of 2 *cottahs* more or less situate on the west side of Dihi Serampore Road in the North Division of the Town of Calcutta and bearing Municipal No. 32-1 and being part of Holding No. 633 in Subdivision B of Division 4 in Estate Dihi Panchannagram and bounded as follows, namely, on the *north* by premises No. 32, Dihi Serampore Road, on the *east* by Dihi Serampore Road, on the *south* by premises No. 31, Dihi Serampore Road, and on the *west* by premises No. 32-2, Dihi Serampore Road.

Together with all buildings, structures and erections standing or being on the said land, which said premises and buildings are known as the Sub-Assistant Surgeon's quarters.

Together also with all rights, easements and appurtenances whatsoever belonging or attached or appurtenant to the said land, buildings, structures and erections or held and enjoyed therewith.

Funds.—(1) *The D. W. Burnett Fund* of Rs. 2,000 (face value) of 3½ *per cent.* Government Promissory notes, held by the Controller of Currency under orders contained in Bengal Government No. 511Medl., dated 24th February, 1921, and received from the Official Trustee of Bengal in terms of the Will of D. W. Burnett deceased—the income of which is to be applied in the same manner as income of the Tincowri Dassi Fund abovementioned.

[Ben. Act IX of 1935.]

(The Schedule.)

(2) *The Kedar Nath Rajghoria Fund* of Rs. 6,500 (face value) of $3\frac{1}{2}$ per cent. Government Promissory notes held by the Controller of Currency, investments representing a gift by Babu Babulal Rajghoria in memory of his late father Kedar Nath Rajghoria—the income of which is to be applied partly for giving a treat to the patients of the Hospital on the 28th February in each year in memory of the Donor's father, and partly for providing warm clothing to the patients in the winter.

(3) *The George Jones Fund* at present comprising Rs. 11,000 (face value) of $3\frac{1}{2}$ per cent. Government Promissory notes held by the Controller of Currency received from the Administrator-General of Bengal in part distribution of a legacy under the Will of George Jones deceased—the income of which is to be applied for the general purposes of the Hospital.

NOTE.—When the house No. 14, Watkins Lane, Calcutta, is sold by the said Administrator-General one-half of the net proceeds will be added to this Fund. In the meantime half of the net rents of the house are receivable by the Hospital. See Part III of this schedule.

(4) *The Krishna Bhamini Dassi Fund* of Rs. 5,200 (face value) of $3\frac{1}{2}$ per cent. Government Promissory notes, held by the Controller of Currency, received from Babu Hem Chandra Bhowse as a gift in memory of his late mother—the income of which is to be applied for the maintenance of an additional bed in the Hospital, to be named after the late Sm. Krishna Bhamini Dassi.

PART III.

Funds and property held in trust for the Hospital.

1. Under the Will of the late *George Jones* abovementioned, two houses were given in trust for sale, the proceeds to be divided equally between this Hospital and another Institution, and one house was sold and the proceeds were divided. The remaining house No. 14 (formerly 19), Watkins Lane, Howrah, is unsold and remains held by the Administrator-General of Bengal until sale, when half of the net proceeds will be receivable by the Hospital. In the meantime half of the net rents thereof are being received by the Hospital.

2. *The William Incell Memorial Fund* of Rs. 8,000 (face value) of $3\frac{1}{2}$ per cent. Government Promissory notes held by the Official Trustee of Bengal as Trustee of a Trust Deed executed by the late Mrs. Delphine Catherine Incell in memory of her husband, being a one-fifth share of a fund—the income of which total fund is divisible among five Religious or Charitable Institutions of which this Hospital is one. The income is to be applied for the benefit of the European and Anglo-Indian destitute patients in the Hospital.

Bengal Act X of 1935.

(THE BENGAL ELECTRICITY DUTY ACT, 1935)¹.

An Act to levy a duty on electrical energy consumed for lights and fans in Bengal.

(30th May 1935.)

WHEREAS it is expedient to levy a duty on electrical energy consumed for lights and fans in Bengal ;

5 & 6 Geo.
V, c. 81 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10 Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Electricity Duty Act, 1935.

Short title,
extent,
commencement
and duration.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date² as the [Provincial Government] may by notification in the [Official Gazette] appoint * * *

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "consumer" means any person other than a district

Page 529—

VOLUME V.

In section 2—

(a) to clause (1), add the words "or by the State Government" at the end; and

(b) in clause (3), after the words and figures "section 23 of that Act", insert the words, figures and brackets "and also includes the West Bengal Electricity Board to be constituted under section 5 of the Electricity (Supply) Act, 1948".

(Added and inserted by West Ben. Act LXI of 1950, section 2.)

LIV of
1948.

[No. 46, dated the 9th November, 1951.]

¹The Act came into force on the 1st July, 1935, vide notification No. 5151Com., dated the 1st June, 1935, published in the Calcutta Gazette, dated the 6th June, 1935, Pt. I, p. 966.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Calcutta Gazette", *ibid.*

⁴The words "and shall continue in force for three years only" were repealed by s. 2 and the Sch. of the Bengal Expiring Laws Act, 1938 (Ben. Act IV of 1938).

(Secs. 3, 4.)

Duty on units
of energy
consumed.

3. There shall be charged, levied and paid to the Government of Bengal, on the units of energy consumed for the purpose of lights or fans or both, a duty (hereinafter referred to as "electricity duty") at the rates specified in the First Schedule :

Provided that electricity duty shall not be leviable on the units of energy consumed—

- (a) ¹[by any Government], except to the extent specified in the Second Schedule ;
- (b) by, or in respect of, any—
 - (i) local authority ;
 - (ii) railway administration, as defined in the Indian Railways Act, 1890 ;
 - (iii) tramway company ;
 - (iv) mine, as defined in the Indian Mines Act, 1923 ;
 - (v) industrial undertaking ;
 - (vi) institution or class of persons specified in the Second Schedule,
 except to the extent specified in the Second Schedule ;
- (c) in any—
 - (i) place of public worship, public burial or burning-ground or other place for the disposal of the dead ;
 - (ii) premises declared by the ²[Provincial Government] to be used exclusively for purposes of public charity ;
 - (iii) vessel, whether sea-going or inland.

Exemption of
newly-formed
undertakings.

4. (1) Notwithstanding anything contained in section 3, electricity duty shall not be leviable on energy supplied by a licensee until the expiry of three years from the date on which energy was first supplied in the area of supply specified in his license :

Provided that, if a licensee ceases to supply energy in any area of supply or if his license is revoked, and thereafter another licensee supplies energy in such area the ³[Provincial Government] may, by order, exempt the licensee from the levy of electricity duty in the order.

Page 530—

In sub-section (1) of section 4, the words "his license" substitute the words "the license".

(Substituted by West I)

[No. 46, dated the 31st Dec. 1937.]

order, exempt the licensee from the levy of electricity duty in the order. The licensee shall operate in the area as modified.

¹These words were substituted for the words "by Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 529, ante.

of 1935.]

Page 531—

In section 5—

(i) after sub-section (1), insert the following sub-section, namely:—

“(1A) In the case of energy supplied by the State Government, the consumer shall pay to the State Government at the prescribed time and in the prescribed manner the electricity duty payable under section 3 on the units of energy supplied by the State Government to the consumer for the purpose of lights and fans.”;

(ii) in sub-section (2),—

(a) after the word “licensee” occurring for the first time, insert the words “or the State Government, as the case may be,”; and

(b) omit the word “he”;

(iii) in sub-section (4), after the word “licensee” insert the words “or the State Government”.

(Inserted and omitted by West Ben. Act LXI 1950, section 4.)

[No. 46, dated the 9th November, 1951.]

IX of
1910.

In section 8—

Page 531—

*In sub-section (4) of section 5, after the words “who generated”, substitute the words “or supplied”.

(Substituted by West Ben. Act XXX of 1953, section 2.)

[No. 52, dated the 10th February, 1954.]

[No. 46, dated the 9th November, 1951.]

6. Every licensee, and every person liable to pay such duty under sub-section (4) of section 5 shall, unless he is exempt from payment of electricity duty under the proviso to section 3, keep books of account in the prescribed form and submit to the ¹[Provincial Government] or to the prescribed officer returns in the prescribed form at the prescribed times, showing the units of energy supplied, generated or consumed by him, as the case may be, and the amount of the duty payable thereon and recovered or paid by him under section 5.

to keep
books of account
and submit
returns.

7. (1) The ¹[Provincial Government] may, by notification in the ²[Official Gazette], appoint inspecting officers to inspect the books of account required by section 6 to be kept. Such officers shall perform such duties and exercise such powers

Inspecting
Officers.

¹See foot-note 3 on p. 529, ante.

²See foot-note 4 on p. 529, ante.

(Secs. 8—11.)

as may be prescribed for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

(2) Every officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Recoveries.

8. Any sum due on account of electricity duty, if not paid at the prescribed time and in the prescribed manner shall be recoverable, as a public demand—

- (a) in the case of energy supplied by a licensee, at the discretion of the ¹[Provincial Government], either from the consumer, or, subject to the proviso to sub-section (1) of section 5, from the licensee; and
- (b) in the case of other energy, from the person liable to pay such duty under sub-section (4) of section 5.

Penalties.

9. If any person required by section 6 to keep books of account or to submit returns fails to keep such books in the prescribed form, or to submit such returns in the prescribed form at the prescribed times or if any person intentionally obstructs an inspector appointed under section 7 in the exercise of his powers and duties under this Act and the rules made thereunder he shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees.

Exemption of small generating plants.

10. This Act shall not apply to energy generated by a plant having a capacity not exceeding two and a half kilowatts.

Power to make rules.

11. (1) The ¹[Provincial Government] may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the time and manner of payment of the electricity duty under section 5;
- (b) the form of the books of account to be kept, the times at which, the form in which and the officer to whom, the returns required by section 6 shall be submitted;
- (c) the duties and powers of inspecting officers; and
- (d) any other matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the ¹[Provincial Government], necessary for giving effect to the provisions of this Act.

(3) In making a rule under sub-section (1) or sub-section (2) the ¹[Provincial Government] may provide that a breach of it shall be punishable with a fine not exceeding fifty rupees.

¹See foot-note 3 on p. 529, ante.

In the First Schedule put an asterisk against article (1) and insert the following footnote, namely:—

*During the continuance in force of the Bengal Finance Act, 1945, for article (1) of the following

Put an asterisk before article (1) of the rates of duty specified in the First Schedule, and insert the following footnote after footnote 1, namely:—

*During the period ending the 31st March, 1949, for article (1) of the rates of duty specified in the First Schedule to the Bengal Electricity Duty Act, 1935, the following article shall be deemed to be substituted, namely:—

“(1) in respect of all premises not falling under article (2)—

(a) when the net charge of the license for the supply of energy for the purpose of lights or fans or both does not exceed three annas for each unit of energy consumed as follows, namely:—

in the case of a consumer whose consumption of energy during the month to which the calculation of duty relates—

(i) does not exceed fifteen units—nil,

(ii) exceeds fifteen units but does not exceed fifty units—six pies for each unit of energy consumed,

(iii) exceeds fifty units—one anna for each unit of energy consumed,

(b) in other cases—six pies for each unit of energy consumed.

Explanation.—In this article the expression ‘net charge’ means the amount of charge that remains after deduction from the charge of the licensee for the supply of energy any rebate allowed by the licensee for prompt payment.”

and the electricity duty imposed under section 3 of the Bengal Electricity Duty Act, 1935, shall be charged, levied, and paid to the Provincial Government accordingly.

(Substituted by West Bengal Act X of 1948, section 3.)

[No. 43, dated the 5th June, 1949.]

ment accordingly.

[Vide Bengal Act II of 1945, sections 1(3) and 3.]

[No. 36, dated the 10th July, 1945.]

[No. 36, dated the 10th July, 1945.]

used for residential purposes ;

(3) a local authority, save in respect of premises used for residential purposes ;

(4) a tramway company, save in respect of premises used for residential or office purposes ;

(5) a mine, save in respect of premises used for residential or office purposes ;

(6) an industrial undertaking, save in respect of premises used for residential or office purposes ;

¹These words were substituted for the words “The Government” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(*The Second Schedule.*)

(7) a hospital or dispensary which is not maintained for private gain ;

(8) any consumer using not more than fifteen units in any one month ;

(9) any consumer, being a landlord, or other person who supplies energy to one-roomed or two-roomed shops or tenements in any one building, in respect of the

plied
fteen

Page 534—

In the Second Schedule in Explanation (1) to the word " Indian", and insert the following no

(6),
mises
ctur-
the

(Repealed by Bengal Act XVI of 1946, Schedule.)

[No. 41, dated the 22nd July, 1934.]

XXV of
1934.

Explanation (2).—For the purposes of exemption (8) in the premises referred to in Article (2) of the First Schedule every 10 watts shall be deemed to consume one and a half units in a month.

Explanation (3).—For the purposes of exemption (9), whether more than fifteen units of energy have been used in any one month in any shop or tenement for which there is no meter or sub-meter shall be determined by dividing the total number of units supplied during that month to such shops or tenements in the building by the number of such shops or tenements therein.

Bengal Act XI of 1935.

[THE COURT-FEES (BENGAL SECOND AMENDMENT) ACT, 1935.]¹

(16th May 1935.)

An Act further to amend the Court-Fees Act, 1870.

VII of
1870.

WHEREAS it is expedient to amend the Court-fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10 Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Court-fees (Bengal Second Amendment) Act, 1935.

Short title,
extent,
commencement
and duration.

(2) It extends to the whole of Bengal.

Pages 535-536—

Strike out Bengal Act XI of 1935, and insert the following note, namely :—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

2. The Court-fees Act, 1870, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

application
of
Act.

3 to 6. [Amendments incorporated in Act VII of 1870.]

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 28th January, 1935, page 20 ; and for report of the Select Committee, see *Calcutta Gazette*, dated the 21st March, 1935, Part IV, page 106 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 1, page 124, and *ibid* No. 3, pages 51 and 63.

²The Act came into force on the 1st June, 1935, vide Notification No. 194T.F., dated the 16th May, 1935, published in the *Calcutta Gazette*, Extraordinary, dated the 17th May, 1935, page 37.

³These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words " *Calcutta Gazette* ", *ibid*.

[Ben. Act XI of 1935.]

(Sec. 7.)

Exemption of
certain probates,
etc.

7. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Indian Succession Act, 1925, in respect of which the fee payable under the law for the time being in force has been paid before the commencement of this Act, but which has not issued. ~~XXXXIX~~ of 1925.

Bengal Act XVI of 1935.

(THE BENGAL DEVELOPMENT ACT, 1935.)

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[Ben. Act XVI of 1935.]

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Bengal Act XVI of 1935.

(THE BENGAL DEVELOPMENT ACT, 1935.)¹

(3rd October 1935.)

An Act to provide for the development of lands in Bengal and to impose a levy in respect of increased profits resulting from improvement works constructed by the Government.

WHEREAS it is expedient to provide for the development of lands in Bengal and for that purpose to impose a levy in respect of increased profits resulting from improvement works constructed by the Government and to provide further powers in regard to works of improvement;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

5 & 6 Geo.
V, c. 81
6 & 7 Geo.
V, c. 37;
9 & 10
Geo.
V, c. 101.

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Development Act, 1935.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date² as the ³[Provincial Government] may, by notification, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agricultural lands" include lands used for the growing of vegetables and the like but does not include fruit gardens, orchards or homestead lands;

(2) "canal" means a canal as defined in clause (1) of section 3 of the Bengal Irrigation Act, 1876;

Ben. Act
III of 1876.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1935, Pt. IV, page 49; and for report of the Select Committee, see *ibid*, page 150; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 1, page 217, and *ibid* No. 2, pages 78 and 121 and *ibid* Vol. XLVI, No. 1, pages 88, 140, 188, 237, 289, 335 and 393.

²The Act came into force on the 23rd January, 1936, vide Notification No. 1-I, dated the 20th January, 1936, published in the *Calcutta Gazette*, dated the 23rd January, 1936, Part I, page 194.

³These words were substituted for the words "Local Government" by paragraph 4(f) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 2.)

- (3) "Collector" includes any officer specially appointed by the ¹[Provincial Government] to perform all or any of the functions of a Collector under this Act ;
- (4) "dead or decayed river" includes any river into which, or along any part of which, water has ceased to flow as freely as it would have flowed if it had not been diverted or obstructed whether owing to natural causes or as a result of interference by man, and includes also any depression which at one time formed part of a river-bed but through which there is no longer any perennial flow of water ;
- (5) "improvement work" means any work of improvement ²[constructed, before the commencement of Part III of the Government of India Act, 1935, by any Government or constructed or proposed to be constructed after that date by the Provincial Government] which the ¹[Provincial Government] has, by notification, declared to be an improvement work for the purposes of this Act :

26, Geo. V,
C. 2.

Provided that no road or railway constructed before the commencement of this Act shall be so declared ;

- (6) "notification" means a notification published in the ³[Official Gazette] ;
- (7) "notified area" means any area in respect of which the ¹[Provincial Government] has, by a notification issued under sub-section (1) of section 5, declared its intention to impose an improvement levy, and includes any part of such area ;
- (8) "period for objection" means a period mentioned in a notification under this Act within which objections or suggestions will be received ;
- (9) "prescribed" means prescribed by rules made under this Act; and
- (10) "rent" and "tenant" have the same meanings as in the Bengal Tenancy Act, 1885.

VIII of
1885.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words and figures were substituted for the words "constructed by the Government, before or after the commencement of this Act, or proposed to be constructed by the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1935.]

(Secs. 3—6.)

3. Whenever, in the opinion of the ¹[Provincial Government], any improvement work has increased or is likely to increase the profits from the produce from any agricultural land, or to increase the outturn of such produce, within any area, the ¹[Provincial Government] may, by notification, declare its intention to impose an improvement levy within that area.

Preliminary notification of intention to impose improvement levy.

4. A notification under section 3 shall state the following particulars—

Publication of particulars.

- (a) as full a description of the improvement work as, in the opinion of the ¹[Provincial Government], may be practicable;
- (b) the object for which such work has been, or is proposed to be, constructed; and
- (c) the boundaries of the area within which the ¹[Provincial Government] intends to impose the improvement levy.

5. (1) After the expiry of a period for objection to be mentioned in a notification under section 3 the ¹[Provincial Government] shall consider the objections and suggestions, if any, received by it and thereafter shall, by notification, declare its intention either wholly to refrain from imposing the improvement levy or to impose the same in the area concerned or in a specified part thereof, whereupon the area in respect of which the ¹[Provincial Government] has by such a notification declared its intention to impose the improvement levy shall be deemed, for the purposes of this Act, to be a notified area.

Abandonment of intention or declaration of intention to impose improvement levy.

(2) The ¹[Provincial Government] may, so far as may be in the manner hereinbefore provided, from time to time include in or exclude from any notified area any area which, in the opinion of the ¹[Provincial Government], has benefited or has not benefited, as the case may be, from the improvement work.

6. No expenditure shall be incurred for the construction of any improvement work in respect of which the ¹[Provincial Government] intends to impose an improvement levy, and no improvement levy shall be imposed in respect of any improvement work, unless the Bengal Legislative ¹[Assembly] has, by a resolution, recommended the imposition of an improvement levy in respect of such work :

Recommendation by the Bengal Legislative Assembly for imposition of improvement levy.

¹See foot-note 1 on p. 540, *ante*.

²This word was substituted for the word "Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 7—9.)

Provided that nothing in this section shall apply to the Damodar Canal (including the Eden Canal) and the Bakreswar Canal.

Imposition of improvement levy.

7. When the ¹[Provincial Government] is satisfied that a notified area has benefited or is likely to benefit from an improvement work it may, by notification, subject to the provisions of section 6, impose the improvement levy in that area from such date as may be specified in the notification.

Estimate of increased out-turn of produce from agricultural land.

8. (1) From time to time an officer appointed by the ¹[Provincial Government] shall, in accordance with rules made under this Act, and after hearing any objections in the prescribed manner, prepare in respect of land throughout a notified area an estimate of the average increase in the out-turn of the produce from agricultural land of any class which, in his opinion, has been or is likely to be made possible by any improvement work, on the assumption that the land has produced and will produce the staple food crop notified under section 39 of the Bengal Tenancy Act, 1885, in respect of that land :

VIII of 1885.

Provided that the ¹[Provincial Government] may, at its discretion, direct that the estimate be made on the assumption that the land has produced or will produce some other crop or crops.

(2) The Board of Revenue shall, by notification, publish such estimate and, after a period for objection to be specified in such notification, shall consider the objections and suggestions, if any, received by it and shall report to the ¹[Provincial Government] thereon. Thereafter the ¹[Provincial Government] may reject the estimate or may, by notification, accept it with or without modification, whereupon the accuracy of any estimate so accepted shall not be questioned in any Court.

(3) Where an estimate has been accepted under sub-section (2) in respect of a notified area before the imposition of the improvement levy, such estimate shall, as soon as may be practicable after the expiry of two years from the date of the imposition of the levy, be revised in the manner provided in sub-sections (1) and (2) for the preparation, publication, and acceptance of an estimate.

Fixing value of increased outturn.

9. The ¹[Provincial Government] shall, by notification, fix annually or for such period not exceeding five years as may be specified in the notification the price or prices on the basis of which the value of the average increase in the outturn, as estimated under section 8, from land of any class in a notified area is to be calculated.

¹See foot-note 1 on p. 540, ante.

of 1935.]

(Sec. 10.)

10. (1) Notwithstanding anything contained in any other Act the improvement levy shall be imposed in respect of agricultural lands within a notified area at such rate or rates as the ¹[Provincial Government], may, by notification, from time to time declare, and different rates may be so declared for classes of land of different descriptions or having different advantages :

Maximum limits and incidence of improvement levy.

Provided that any rate so fixed shall not exceed one-half of the estimated net increase, resulting from the improvement work, in the profits or one-half of the net value of the estimated increase in outturn.

Such improvement levy shall be payable by the occupiers of such lands within the notified area.

Explanation.—In this sub-section the expression “estimated increase in outturn” means the average increase in the outturn of agricultural produce as estimated under section 8.

(2) The rate or rates of the improvement levy shall be fixed under sub-section (1) for one year or for such period not exceeding five years as may be specified in the notification issued under that sub-section.

(3) For the purposes of sub-section (1) the net increase in the profits and the net value of the estimated increase in outturn shall be estimated, in accordance with rules made under this Act, on the price or prices fixed under section 9.

(4) The ¹[Provincial Government] may, by rules made under this Act, declare what persons or classes of persons shall be deemed, for the purposes of sub-section (1), to be occupiers of land but no person shall, by such rules, be declared to be an occupier of land unless, otherwise than as a hired labourer, he cultivates such land or (if it is not cultivated) unless he is in direct possession of such land.

(5) Notwithstanding anything contained in sub-section (4), where a person under the system generally known as “*adhi*”, “*barga*” or “*bhag*”, cultivates the land of another person on condition of delivering a share of the produce to that person or receiving a share thereof from him, the person whose land is cultivated and the person who cultivates it shall each be deemed, for the purposes of sub-section (1), to be an occupier of such land, and each shall be liable to pay a prescribed proportion of the improvement levy imposed in respect of such land, and any contract to the contrary shall, to that extent, be void.

¹See foot-note 1 on p. 540, *ante*.

(Secs. 11, 12.)

(6) In the case of any land, the amount of improvement levy realised for any year—

(a) in respect of the Bakreswar Canal shall not exceed four rupees eight annas per acre ;

(b) in respect of the Damodar Canal and the Eden Canal shall not exceed five rupees eight annas per acre :

Provided that in the case of any land which was irrigated from the Eden Canal in any year during the ten years prior to the first day of April, 1935, such amount shall not exceed three rupees eight annas per acre.

Additional
improvement
levy in
certain cases.

11. (1) Notwithstanding anything contained in section 10, if in any notified area any unculturable waste, swamp, or sand has, as a result of an improvement work, become culturable land, and such land is thereafter settled with any tenant, the person who settles the land shall be liable to pay, in one sum, an improvement levy of such amount as may be fixed by the Collector, in accordance with rules made under this Act, after considering any objection that may be made in the prescribed manner by such person.

(2) The amount fixed under sub-section (1) shall not exceed one-half of the difference between—

(a) the amount which the Collector estimates to be the usual *salami* for a like area of land, in the vicinity, similar in its description and its advantages to the land as it is at the time of the settlement, and

(b) the amount which the Collector estimates to have been the usual *salami* before the commencement of the improvement work, for a like area of land, in the vicinity, similar in its description and its advantages to the land as it was at that time.

Such levy shall be additional to the levy payable under section 10 by the occupier of the land.

Amount of
improvement
levy after
realisation
of capital
cost and
charges.

12. When in respect of any improvement work—

(a) the capital cost of such work, including the cost of any extensions, improvements or modifications of the work,

(b) the interest charges on such capital cost,

of 1935.]

(Secs. 13, 14.)

- (c) any working loss in any year or years, and
- (d) the interest on such loss,

as determined by the ¹[Provincial Government], have been recovered in full out of the proceeds of the improvement levy, by such annual allocations as may be prescribed, the amount of the improvement levy to be realised for each year in respect of such work shall thereafter be reduced to such a sum as the Bengal Legislative ²[Assembly] may, by a resolution, recommend :

Provided that in respect of the Damodar, Eden and Bakreswar Canals such sum shall not exceed the amount required to meet the annual cost, as determined by the ¹[Provincial Government], of maintenance and supervision of the improvement work and of collection of the improvement levy.

Explanation.—The term “ working loss ” means the sum by which the proceeds of the improvement levy in any year or years fall short of the amount necessary to meet —

- (i) the annual allocations for such year or years in respect of the charges specified in clauses (a) and (b), and
- (ii) the cost, as determined by the ¹[Provincial Government], of maintenance and supervision of the improvement work, and of collection of the improvement levy, during such year or years.

13. The Collector shall, from time to time, prepare and publish in the prescribed form and manner for a notified area or any part thereof a statement showing—

- (i) the name of every person who is liable to pay the improvement levy in respect of any land in such area or part, and
- (ii) the amount of improvement levy to be paid by each such person, annually or otherwise, in respect of such land.

Preparation and publication of statements of imposition of improvement levy.

14. The Collector shall serve a notice of demand in the prescribed form and manner and containing the prescribed particulars, on every person whose name appears in a statement published under section 13 requiring him to pay the levy by such date or dates as may be specified in the notice.

Notice of demand.

¹See foot-note 1 on p. 540, *ante*.

²See foot-note 2 on p. 541, *ante*.

(Secs. 15—18.)

Republication
of statements
and revised
notice of demand.

15. (1) After forty days from the date of publication of a statement under section 13 the Collector shall, in accordance with rules made under this Act, republish the statement with such modifications as he may have made as a result of representations by persons whose names were included therein, and, subject to any decisions by an appellate or revisional authority, all entries in the statement as thus republished shall be presumed to be correct in every particular for the purposes of this Act.

(2) If the Collector makes any modification referred to in sub-section (1) in the statement he shall serve on the person concerned a revised notice of demand in the prescribed form and manner and containing the prescribed particulars.

Supplementary
statements.

16. (1) The Collector may, from time to time, add to or alter in the prescribed manner any statement republished under sub-section (1) of section 15. In such case, the Collector shall publish in the prescribed form and manner a supplementary statement showing any addition or alteration so made, and the provisions of this Act shall apply to such supplementary statement as if it were a statement published under section 13.

(2) Where any addition to or alteration in a statement is required as a result of a decision of an appellate or revisional authority, the Collector shall add to or alter the statement accordingly, and it shall not be necessary to publish any supplementary statement in respect thereof under sub-section (1).

Appeals in
regard to
improvement
levy.

17. (1) Any person may appeal within thirty days from the date of service of the notice under section 14 or of a revised notice, if any, under sub-section (2) of section 15 or from the date of republication of a statement under sub-section (1) of section 15, whichever is later, to the Commissioner of the Division, on the ground that he has been wrongly shown in the statement as liable to pay the improvement levy or that the amount shown in such statement as payable by him is incorrect, and the decision of the Commissioner of the Division on such appeal shall, subject to the provision of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Bar to objections
to improvement
levy, except as
provided in this
Act.

18. No objection shall be taken to the imposition of an improvement levy, nor shall the liability of any person to pay the same be questioned, in any other manner than that provided in this Act.

of 1935.]

(Secs. 19—24.)

19. Copies of entries in a statement published under section 13 or republished under sub-section (1) of section 15 shall be made available in the prescribed manner on payment of the prescribed fee.

Copies of entries in statement.

20. Notwithstanding anything contained in this Act, the Collector may, subject to rules made by the ¹[Provincial Government], at any time grant abatement or remission of the improvement levy payable under this Act.

Power of Collector to grant abatement or remission of improvement levy.

21. (1) Subject to the provisions of section 20, the Collector shall, in the prescribed manner, collect from any person whose name appears in a statement republished under sub-section (1) of section 15 the amount shown therein as due from him together with any interest payable under sub-section (2).

Collection of improvement levy.

(2) If any amount of improvement levy due from any person is not paid on or before the prescribed date, interest at such rate, not exceeding six and a quarter *per cent.* per annum, as the ¹[Provincial Government] may fix from time to time, shall be payable thereon from the date of the default.

22. If any person has paid any amount as improvement levy which, in accordance with the decision of the appellate or revisional authority, or in the opinion of the Collector, was not payable by such person, the Collector shall, in the prescribed manner, refund the amount to such person.

Refunds.

23. All arrears of improvement levy, together with interest due thereon, and other dues payable to the ¹[Provincial Government] under this Act shall be recoverable as public demands.

Recovery of arrears and other dues.

24. (1) If, in the opinion of the ¹[Provincial Government], it is desirable for the purpose of collecting information regarding the outturn of produce from any agricultural land, the ¹[Provincial Government] may, by general or special order, authorise any officer and his servants and workmen, subject to rules made under this Act, to enter upon any land and to do any acts necessary for the purpose of obtaining such information :

Power to enter on land and to cut and remove crops.

Provided that no person shall enter into any building or upon any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

¹See foot-note 1 on p. 540, *ante*.

(Secs. 25—27.)

(2) If, in the opinion of any officer authorised under sub-section (1), it is necessary to remove any crop for the purpose of ascertaining, by weighment or otherwise, the amount of the produce derived from any land, he may, subject to rules made under this Act, and after giving notice in writing, forthwith take possession of any standing crop on such land or part thereof, and may cause such crop to be cut and to be removed within such reasonable period as he may consider necessary.

(3) In every case under sub-section (2), such officer shall offer to the persons interested compensation for the standing crop cut and, subject to rules made under this Act, for any other damage caused during the process of cutting and removal; and, if such offer is not accepted, the value of the crop cut and the amount of the damage so caused shall be assessed by the Collector in the prescribed manner.

Power to compel production of statements and documents.

25. (1) Subject to rules made under this Act, any officer authorised under sub-section (1) of section 24 may, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land mentioned in that sub-section, at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Act XLV of 1860.

Power of Collector to enforce attendance of witnesses and production of documents.

26. For the purposes of any inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the persons interested or any of them, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Act V of 1908.

Dues payable under other Acts in respect of improvement works.

27. (1) Notwithstanding anything contained in any other Act, no person who has been declared liable to pay an improvement levy in respect of any land benefited by an improvement work shall be liable to pay any rates, dues or charges to the ¹[Provincial Government] under any of the Acts mentioned in the schedule in return for any benefit derived by such land from the improvement work.

(2) When an improvement levy is imposed under this Act in any area in respect of an irrigation work and an agreement exists for the supply of water under the Bengal Irrigation Act, 1876, to any land in that area, the improvement levy shall not be payable in respect of such land until the expiry of the agreement.

Ben. Act III of 1876.

¹These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1935.]

(Secs. 28—31.)

Ben. Act
III of
1876.

28. (1) Within a notified area water may be supplied from a canal to any land notwithstanding the fact that no application has been made under section 74 of the Bengal Irrigation Act, 1876.

Supply of water and application of rules under the Bengal Irrigation Act, 1876.

(2) In any notified area specified by the ¹[Provincial Government], by notification, in this behalf any person by whom an improvement levy is payable under section 10 shall, subject to the provisions of sub-section (1) of section 27, be bound by any rules made under the Bengal Irrigation Act, 1876, for the time being in force, as if he had presented an application under section 74 of the said Act and such application had been granted.

29. Notwithstanding anything contained in the Bengal Irrigation Act, 1876, no person shall have a right to a supply of water under that Act in a notified area within any period prescribed in this behalf.

Right to supply of water.

30. Whenever it appears expedient to carry out any scheme of drainage for the betterment of public health or for the improvement of any land or in connection with irrigation works, the ¹[Provincial Government] may, after issuing a notification and, in the prescribed manner, calling for and considering objections, if any, cause such a scheme to be drawn up and carried into execution, and any officer authorised in this behalf by the ¹[Provincial Government] may exercise in connection with such scheme all or any of the powers conferred on Canal Officers by sections 33, 34 and 35 of the Bengal Irrigation Act, 1876, and thereupon the provisions of sections 36, 37 and 38 of that Act shall be applicable as if such officer were a Canal Officer.

Power to carry out drainage works.

31. The ¹[Provincial Government] may, if it is of opinion that in any area to be specified in a notification the whole or part of any river, stream, natural water-channel or natural drainage-course should be open to the unrestricted passage of water, exercise such powers as may be exercised under the Bengal Irrigation Act, 1876, with regard to the prohibition, removal or modification of obstructions in any river, stream, natural water-channel or natural drainage-course, and the provisions contained in that Act with regard to and, subject to the provisions of section 35, incidental to the exercise of such powers shall be applicable *mutatis mutandis* so far as they may reasonably be applied.

Power to prohibit, remove or modify obstructions to the passage of water in channels.

¹See foot-note 1 on p. 540, *ante*.

(Secs. 32—34.)

Power to modify
obstructions to
the passage of
water through
or over land.

32. (1) The ¹[Provincial Government] may, by notification, declare that in any area specified in the notification every person shall be bound, for irrigation purposes or for the drainage of land which has been irrigated, to afford a free passage to water through or over any land in his possession or under his control.

(2) After the issue of a notification under sub-section (1) the Collector, if in his opinion the free passage of water through or over any land in such area is necessary for irrigation purposes or for the drainage of land which has been irrigated, may, subject to rules made under this Act, from time to time, issue a general or special order upon persons who have such land in their possession or under their control to modify, in such manner and within such period as may be specified in the order, any artificial obstruction that exists on such land to such free passage, or to show cause against such order.

(3) If the Collector is not satisfied with any cause that may have been shown, he shall fix a further period within which the obstruction shall be modified.

(4) If any person fails to comply with an order under sub-section (2) or sub-section (3), or under section 37, in respect of such modification, he shall be liable on conviction by a magistrate to a fine not exceeding fifty rupees for each such offence, and to a further fine not exceeding five rupees for each day after conviction during which the obstruction remains unmodified, and the Collector may cause the obstruction to be modified and may recover the cost of modification from such person.

Notification of
dead or decayed
rivers.

33. (1) The ¹[Provincial Government] may, from time to time, publish by notification a list of rivers or depressions which it intends to declare to be dead or decayed rivers.

(2) In any list published under sub-section (1) any river or depression may be described either by name or by reference to its geographical situation.

(3) After the expiry of a period for objection to be mentioned in a notification under sub-section (1), the ¹[Provincial Government] shall consider the objections and suggestions, if any, received by it and thereafter may, by notification, declare any river or depression notified under that sub-section to be a dead or decayed river, and such declaration shall be final and shall not be questioned in any Court or in any other manner whatsoever.

Limitation of
claims for
compensation.

34. No person shall be entitled to claim any compensation under this or any other Act for any injury, damage or loss caused by a dead or decayed river which has been revived as a result of an improvement work, or by any other river into which it flows or spills, unless the injury,

¹See foot-note 1 on p. 540, *ante*.

of 1935.]

(Secs. 35, 36.)

damage or loss is such as would have rendered the ¹[Provincial Government] liable to pay compensation had the river not been revived.

Explanation.—A dead or decayed river is said to be revived when an increased volume of water is, by any means whatsoever, caused to flow freely into or along any part of such dead or decayed river.

35. Subject to the provisions of section 34, whenever— Claims for compensation.

- (a) any damage is caused as a result of the prohibition, removal or modification of an obstruction under section 31 or section 32, or
- (b) any land or right of property is injuriously affected by any improvement work in respect of which an improvement levy is imposed under this Act,

the person by whom any damage or loss is sustained shall not be entitled to claim any compensation for such damage or loss under any other Act, but such person may, not later than six months after the first occurrence of the injury in respect of which the claim is preferred, prefer to the Collector a claim for compensation.

36. (1) When a claim is preferred under section 35, the Collector shall, in the prescribed manner, after such inquiry as he deems proper and after considering any representations which may be made to him, determine the amount of compensation, if any, which shall be granted. Determination of amount of compensation.

(2) In determining whether any and, if so, what amount of compensation shall be granted, the Collector shall be bound by the provisions of any rules made by the ¹[Provincial Government] under this Act regulating the grant of compensation under this section.

(3) When the amount of compensation has been determined under sub-section (1), if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall, in the prescribed manner, refer such dispute to the Court, and such Court or any other Court mentioned in sub-section (5) to which the dispute may, subject to rules made under this Act, be transferred for decision, shall decide the same.

(4) In every reference under sub-section (3) the costs shall be at the discretion of the Court.

¹See foot-note 1 on p. 540, *ante*.

[Ben. Act XVI]

(Secs. 37—39.)

(5) In this section "Court" means a principal Civil Court or original jurisdiction and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the [Provincial Government] may appoint, by name or by virtue of his office, to perform concurrently with any such principal Civil Court the functions of the Court under this section within any specified local limits and, in the case of a Munsif up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887.

XII of
1887.

Appeals from
certain
decisions and
orders of
Collector.

37. (1) Any person aggrieved by a decision or order of the Collector under section 20, sub-section (3) of section 24, section 32 or sub-section (1) of section 36 may appeal, within thirty days from the date of such decision or order, to the Commissioner of the Division, whose decision on such appeal shall, subject to the provisions of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Costs.

38. In every appeal under sub-section (1) of section 17, or under sub-section (1) of section 37, and in every revision under sub-section (2) of section 17 or under sub-section (2) of section 37, the costs shall be at the discretion of the appellate or revisional authority, and such costs shall be recoverable as a public demand.

Restrictions on
enhancement
of rent of
agricultural
lands in notified

39. Notwithstanding anything contained in the Bengal VIII of
Tenancy Act, 1885, when an improvement levy has been 1885.
imposed in respect of any agricultural land—

- (a) the rent payable for such land at the time of the imposition of the levy or fixed thereafter in accordance with the provisions of clause (b) shall not be enhanced on account of—
 - (i) benefits derived from the construction of any improvement work, or
 - (ii) an increase in the productive powers of the land due to fluvial action;
- (b) if a settlement is made of such land with a tenant thereafter, the rate of rent at which such land is settled shall not exceed the average rate of money rent payable, at the time of such settlement, by tenants of a similar class for land of a similar description and with similar advantages in the vicinity, and any rent in excess of such rate shall not be recoverable :

¹See foot-note 1 on p. 540, *ante*.

of 1935.]

(Secs. 40—44.)

VIII of
1885.

Provided that such average rate may be exceeded on the grounds specified in clause (b) or clause (c) of section 30 of the Bengal Tenancy Act, 1885, by such amount as would be allowable in a suit for enhancement of rent under the said section if the land had been settled with a tenant at such average rate at the time of the imposition of the levy.

A stipulation in any contract by which a tenant taking settlement of such land agrees to pay any amount in excess of such rent, otherwise than as *salami*, shall not be binding on such tenant to the extent of such excess.

40. The ¹[Provincial Government] shall cause every notification under this Act to be published in such manner and at such places as it thinks fit. Publication of notifications.

41. No proceedings under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, statement, notice or order, unless material injury is done to any person by such defect or omission. Proceedings not to be invalidated by irregularities.

42. No suit shall lie in any Civil Court for compensation in respect of any injury, damage or loss resulting from an improvement work or from anything done under this Act. Bar to suits for compensation.

43. No suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act. Indemnity.

44. (1) The ¹[Provincial Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act. Rules.

(2) In particular and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules to provide for all or any of the following matters, namely :—

(a) the manner in which the average increase in the outturn of agricultural produce shall be estimated under section 8 and the manner of hearing objections under sub-section (1) of that section ;

(b) the persons or classes of persons who shall, for the purposes of sub-section (1) of section 10, be deemed to be occupiers of land.

¹See foot-note 1 on p. 540, *ante*.

(Sec. 44.)

- (c) the manner in which the net increase in the profits and the net value of the estimated increase in outturn shall be estimated under sub-section (3) of section 10 ;
- (d) the proportion of improvement levy payable under sub-section (5) of section 10 by different classes of "*adhiars*", "*bargadars*" or "*bhagdars*" and by the persons whose land is cultivated by such "*adhiars*", "*bargadars*" or "*bhagdars*";
- (e) the determination of the amount of improvement levy payable under section 11 and the manner in which objections under sub-section (1) of that section shall be made ;
- (f) the annual allocations to be made under section 12 in respect of each improvement work ;
- (g) the form and manner of preparation and publication of a statement under section 13 and its republication under sub-section (1) of section 15 ;
- (h) the form and contents of the notice of demand under section 14 and of a revised notice of demand under sub-section (2) of section 15 and the manner of service of such notice ;
- (i) the manner in which a statement republished under sub-section (1) of section 15 may be added to or altered, and the form and manner of publication of a supplementary statement under section 16 ;
- (j) the procedure to be followed by the appellate and revisional authorities mentioned in sections 17 and 37 ;
- (k) the manner of, and the amount of fees payable for, supplying copies under section 19 ;
- (l) the grant of abatement or remission of the improvement levy under section 20 ;
- (m) the manner of collection of the improvement levy and interest under sub-section (1) of section 21 ;
- (n) the date of payment of improvement levy under sub-section (2) of section 21 ;
- (o) the manner of refund of improvement levy under section 22 ;
- (p) the procedure and conduct of officers and persons authorised under sub-sections (1) and (2) of section 24 ;
- (q) the offer of compensation, and the manner of assessment by the Collector of damage, under sub-section (3) of section 24 ;

of 1935.]

(The Schedule.)

- (r) the exercise of powers under sub-section (1) of section 25 to enforce the making and delivery of statements and production of documents ;
- (s) the period within which persons shall not have any right to a supply of water under section 29 ;
- (t) the manner in which objections shall be called for and dealt with under section 30 ;
- (u) the issue of orders under sub-section (2) of section 32 for the modification of obstructions to the free passage of water through or over land ;
- (v) the procedure to be followed by the Collector under sub-section (1) and sub-section (3) of section 36 ;
- (w) the transfer of disputes for decision under sub-section (3) of section 36 ; and
- (x) the grant of compensation under section 36.

THE SCHEDULE.

[See sub-section (1) of section 27.]

- | | |
|------------------------------|---|
| Ben. Act III of 1876. | (1) the Bengal Irrigation Act, 1876. |
| Ben. Act VI of 1880. | (2) The Bengal Drainage Act, 1880. |
| Ben. Act II of 1882. | (3) The Bengal Embankment Act, 1882. |
| Ben. Act VIII of 1895. | (4) The Bengal Sanitary Drainage Act, 1895. |
| Ben. Act IV of 1915. | (5) The Bengal Embankment (Sunderbans) Act, 1915. |
| Ben. Act VI of 1920. | (6) The Bengal Agricultural and Sanitary Improvement Act, 1920. |

Bengal Act XVII of 1935.

[THE BENGAL LAND-REVENUE (INTEREST) ACT, 1935.]¹

(26th September 1935.)

An Act to provide for the removal of doubts as to the payment of interest on arrears of land-revenue.

WHEREAS it is expedient to provide for the removal of any doubts as to the liability to pay interest on arrears of land-revenue ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Land-Revenue **Short title.**
(Interest) Act, 1935.

2. (1) Notwithstanding anything contained in any other law, interest shall be payable, and shall be deemed with effect from the 19th day of January, 1933, to have been payable, on all arrears of land-revenue, and such interest shall be recoverable as a public demand. **Interest on arrears of revenue.**

(2) All such interest shall,—

(a) in respect of the period from the 19th day of January, 1933, up to the commencement of this Act, be deemed to have been payable at the rate of ~~seven and a half per centum~~

Page 557—

In clause (b) of sub-section (2) of section 2, for the words “seven and a half” substitute the words “six and a quarter”.

(Substituted by Ben. Act III of 1939, Schedule.)

[No. 1, dated the 15th September, 1939.]

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1935, Pt. IV, p. 148; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 3, p. 375 and *ibid* Vol. XLVI, No. 1, p. 74.

²These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “*Calcutta Gazette*”, *ibid*.

Bengal Act XX of 1935.

[THE BENGAL VILLAGE SELF-GOVERNMENT (TEMPORARY PROVISIONS) ACT, 1935.]¹ .

(31st October 1935.)

An Act to provide for certain matters in connection with certain elections for union boards held before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935.

Ben. Act
VIII of
1935.

WHEREAS it is expedient to make special provision for the term of office of members of union boards in certain cases in which general elections were held before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935, and for the removal of any doubts as to the validity of such elections and of appointments of members made in such cases ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Village Self-Government (Temporary Provisions) Act, 1935. Short title.

Ben. Act
V of 1919.

2. Notwithstanding anything contained in the Bengal Village Self-Government Act, 1919—

Term of office of members of union boards in certain cases, and validity of certain elections and appointments.

- (1) Where a general election has been held for a union board before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935 (hereinafter referred to as the amending Act), but after such election the first meeting, at which a quorum is present, of the newly elected and appointed members of such union board has not been held, the term of office of the formerly elected and appointed members of the union board shall be governed by the provisions of section 11 of the Bengal Village Self-Government Act, 1919, as if it had not been amended by clause (1) of section 6 of the amending Act.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1935, Pt. IV, p. 182; and for proceedings of the Council, see the proceedings of the Bengal Legislative Council, Vol. XLVI, No. 1, p. 80 and *ibid*, No. 2, p. 357.

[Ben. Act XX of 1935.]

(Sec. 2.)

- (2) Where a member has been duly elected at such general election, or has been duly appointed after such general election but before the commencement of the amending Act, such member shall be deemed to be duly elected or appointed, as the case may be, under the Bengal Village Self-Government Act, 1919, as amended by the amending Act, and his election or appointment shall be deemed to be valid for all purposes of the said Act, as so amended.

Ben. Act V of
1919.

Bengal Act II of 1936.

[THE CALCUTTA MUNICIPAL (SECOND AMENDMENT) ACT, 1935.]¹

(30th January 1936.)

An Act further to amend the Calcutta Municipal Act, 1923.

Ben. Act
III of
1923.

WHEREAS it is expedient further to amend the Calcutta Municipal Act, 1923, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Municipal (Second Short title.
Amendment) Act, 1935.

Page 561—

Strike out Bengal Act II of 1936, and insert the following note, namely :—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

~~may consider necessary to give effect to the provisions of this section.~~

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1935, Pt. IV, p. 257; and for proceedings in Council, see the proceedings of the Bengal Legislative Council, Vol. XLVII, No. 1, pages 19 and 389.

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act VII of 1936.

(THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.)

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36. Certain decrees to be treated as nullities.

[Ben. Act VII of 1935.]

SECTION.

37. Attachment of debtor's immovable property.
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41. Power of Appellate Officer to transfer application.
42. Reference to Appellate Officer.
43. Control over Board.
44. Power of Board to review its order.
45. Certain Acts not to apply to the proceedings under this Act.
46. Representation of a party before Board.
47. Registration of awards and certificates.
48. Publication of orders and awards.
49. Chairman and members of Boards deemed to be public servants.
50. Proceedings deemed to be judicial proceedings.
51. Indemnity.
52. Extension of period of limitation.
53. Negotiability of awarded amounts.
54. Penalties.
55. Power to make rules.
56. Penalty for breach of rules.

Bengal Act VII of 1936.

(THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.)¹

[9th April 1936.]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 & 6 Geo. V, c. 61;
6 & 7 Geo. V, c. 37;
9 & 10 Geo. V, c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Agricultural Debtors Act, 1935.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such areas on such dates as the [Provincial Government] may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees and the growing of fruits, vegetables and the like ;

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 12th August, 1935, page 65 ; and for report of the Select Committee, see *Calcutta Gazette*, 1935, Pt. IV, page 200 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council Vol. XLVI, No. 2, pages 492 and 559 and *ibid* XLVII, No. 1, pages 60, 76, 113, 143, 176, 205, 244, 277, 309, 343, 395 and 429 and *ibid* No. 2, pages 17, 49, 98, 141, 291 and 300.

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 2.)

(3) "Appellate Officer" means an officer appointed under section 40;

(4) "award" means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40;

(5) "Board" means a Debt Settlement Board established under sub-section (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4;

(6) "Certificate-officer" means a Certificate-officer as
Page 566—

In section 2, *after* clause (6) *insert* the following clause:—

"(6A) 'Civil Court' means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court;" XII of 1887.

[Inserted by Ben. Act VIII of 1940, section 2 (1).]

[No. 6, dated the 11th July 1940.]

Page 566—

In clause (8) of section 2, *after* the word "liabilities" *insert* the words and figures "incurred prior to the first day of January, 1940".

[Inserted by Ben. Act VIII of 1940, section 2 (2) (a).]

[No. 6, dated the 11th July 1940.]

Page 566—

In sub-clause (iv) of clause (8) of section 2, *after* "section 28" *omit* the word "and" note:—

Act VIII of 1940, section

[July 1940.]

of 1935.]

(Secs. 3, 4.)

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

(a) is a *raiyat* or an under-*raiyat*, or

(b) cultivates land himself or by members of his family or by hired labourers or by *adhidars*, *bargadars* or *bhagdars*;

and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9;

(10) "loan" means loan whether of money or in kind, and includes any transaction which is in the opinion of a
Page 567—

In section 2, after clause (11) insert the following clause:—

"(11A) 'original principal' means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;"

[Inserted by Ben. Act VIII of 1940, section 2 (3).]

[No. 6, dated the 11th July 1940.]

VIII of
1885.

and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

3. (1) The ²[Provincial Government] may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification. Establishment of Debt Settlement Boards.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the ²[Provincial Government].

4. The ²[Provincial Government] may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board:

Power of Provincial Government to cancel appointments of Chairman and members of, or to dissolve, a Board.

Provided that if when a Board is dissolved the ²[Provincial

Page 567—

In the proviso to section 4 for the words "officer who has had judicial experience" substitute the words "servant of the Crown".

[Substituted by Ben. Act VIII of 1940, section 3.]

[No. 6, dated the 11th July 1940.]

amendment of Indian

Laws) Order, 1937.

²See footnote 2 on p. 565, ante.

(Sec. 5—8.)

Delegation of
power to
Commissioner.

Tenure of office.

Provincial
Government
may invest
Boards with
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5. The ¹[Provincial Government] may, by notification, delegate its powers under sections 3 and 4 to the Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment.

7. The ¹[Provincial Government] may, by notification, from
Page 568—

In section 7, *after the word "after" and*

Page 568—

In section 7, *for the words, figures and brackets "sub-section (2) of section 9" substitute the words, figures and brackets "sub-sections (2) or (3) of section 9".*

[Substituted by Ben. Act VIII of 1940, section 4 (a).]

[No. 6, dated the 11th July 1940.]

under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made, to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13 or under clause (b)(ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

¹See foot-note 2 on p. 565, ante.

of 1935.]

(Secs. 9—11.)

9. (1) An application may be made under sub-section (1) of section 8 for the settlement of—

Application for settlement of joint debts.

or more persons

Page 569—

To section 9 *add* the following sub-section:—

“(3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (b) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the entire amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that, notwithstanding anything contained in any other law,—

- (a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and
- (b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord shall be debarred from instituting a suit for the recovery of the same, unless during such period the debtor fails to comply with the said terms.”

[Added by Ben. Act VIII of 1940, section 5.]

[No. 6, dated the 11th July 1940.]

(v) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor ;

(c) the history of each such debt with particulars of the original principal and the rate of interest chargeable ;

(Secs. 11, 12.)

(d) details of any debts for which the debtor is liable as
Page 570—

In sub-section (1) of section 11, *after* clause (d) insert the following clause:—

“(dd) details of any liabilities incurred on or after the first day of January 1940;”.

[Inserted by Ben. Act VIII of 1940, section 6 (1) (a).]

[No. 6, dated the 11th July 1940.]

Page 570—

After clause (e) of sub-section (1) of section 11 insert the following clause:—

“(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;”.

[Inserted by Ben. Act VIII of 1940, section 6 (1) (b).]

[No. 6, dated the 11th July 1940.]

(c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;

(d) the names and addresses of the other creditors, so far as they are known to the creditor;

(e) particulars, so far as they are known to the creditor

Page 570—

In sub-section (2) of section 11, *after* clause (e) insert the following clause:—

“(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;”.

[Inserted by Ben. Act VIII of 1940, section 6 (2).]

[No. 6, dated the 11th July 1940.]

Names and addresses are given in the application.

of 1935.]

(Sec. 13.)

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substances of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. (1) If after consideration of the application the Further

Page 571—

In sub-section (1) of section 13, *for* the words and figure "If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall," *substitute* the words, figures and brackets "At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,".

[Substituted by Ben. Act VIII of 1940, section 7 (a).]

[No. 6, dated the 11th July 1940.]

REVISION OF 1940.

Page 571—

In sub-section (1) of section 13, *after* the words "whichever is later" *insert* the following:—

"and further requiring all creditors to produce on a date specified in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document".

[Inserted by Ben. Act VIII of 1940, section 7 (b).]

[No. 6, dated the 11th July 1940.]

REVISION OF 1940.

Page 571—

In sub-section (1) of section 13, in the proviso, *after* the words "his statement of debt" *insert* the words "or the production of his documents and true copies thereof".

[Inserted by Ben. Act VIII of 1940, section 7 (c).]

[No. 6, dated the 11th July 1940.]

~~or~~ (a) or sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance :

Page 572—

After section 13 insert the following section:—

"13A. If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice."

[Inserted by Ben. Act VIII of 1940, section 8.]

[No. 6, dated the 11th July 1940.]

Page 572—

Omit sub-section (1) of section 14 and insert the following note:—

[Omitted by Ben. Act VIII of 1940, section 9 (1).]

[No. 6, dated the 11th July 1940.]

Page 572—

In sub-section (2) of section 14, for the words "so produced" substitute the words, figures and brackets "produced in compliance with the notice under sub-section (1) of section 13".

[Substituted by Ben. Act VIII of 1940, section 9 (2).]

[No. 6, dated the 11th July 1940.]

Page 572—

In sub-section (3) of section 14, after the words, figure and brackets "as required by sub-section (1)" insert the words and figure "of section 13".

[Inserted by Ben. Act VIII of 1940, section 9 (3).]

[No. 6, dated the 11th July 1940.]

of 1935.]

(Secs. 17, 18.).

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,— **Dismissal of applications.**

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

(b) if, in the opinion of the Board—

(i) the applicant fails to pursue his applications with due diligence, or

(ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section 8 shall be dismissed by the Board; if in its opinion—

(a) such application includes a claim which is intended to defraud any creditor; or

(b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount : **Determination of amounts of debts.**

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

Page 573—

(1) In sub-section (2) of section 18, for the words "after hearing the parties and considering the evidence produced" substitute the words "the evidence produced, if any, after having given an opportunity to the parties to appear and be heard,".

[Substituted by Ben. Act VIII of 1940, section 10 (1).]

[No. 6, dated the 11th July 1940.]

Page 573—

Omit sub-section (3) of section 18, and insert the following note :—

[Omitted by Ben. Act VIII of 1940, section 10(2).]

[No. 6, dated the 11th July 1940.]

Page 574—

After section 19 insert the following section :—

“19A. (1) If the creditor does not restore possession of the immovable property to the debtor by the date specified in an award under sub-section (2) of section 19, the debtor may, apply to the Certificate-officer exercising jurisdiction in the area in which such property is situated, to be put in possession thereof.

(2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate-officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.

(3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate-officer shall on the application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate-officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand.”

[Inserted by Ben. Act VIII of 1940, section 12.]

[No. 6, dated the 11th July 1940.]

Page 574—

In section 20, after the word “not,” insert the words “or whether a liability is a debt or not”.

[Inserted by Ben. Act VIII of 1940, section 13.]

[No. 6, dated the 11th July 1940.]

of 1935.]

(Secs. 21, 22.)

21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates,

Grant of certificate in respect of certain debts.

and thereafter, notwithstanding the provision of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt, any costs

Page 575—

In section 21, omit the words, figures and brackets "in excess of simple interest at the rate of six per cent. per annum on the principal of such debt as determined under sub-section (2) of section 18" and insert the following note:—

[Omitted by Ben. Act VIII of 1940, section 14 (a).]

[No. 6, dated the 11th July 1940.]

Page 575—

In section 21, for the words, figures and brackets "or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate" substitute the following words, figures and brackets:—

"or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under sub-section (5) of section 29, until the award has so ceased to subsist."

[Substituted by Ben. Act VIII of 1940, section 14 (b).]

[No. 6, dated the 11th July 1940.]

shall be utilised towards the payment of his debts in such manner as may be specified in the order.

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lvent
s debts.

(2) The Certificate-Officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale.

(Sec. 23.)

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors :

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house :

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house :

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under section 28, the Board shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8 :

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

The principal of certain debts not to be reduced.

23. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

VIII of 1885.

of 1935.]

(Secs. 24, 25.)

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

Exemption of certain property of an insolvent debtor from sale.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

25. (1) An award shall be in the prescribed form and shall include the following particulars :— Awards.

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon ;

(b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge ;

(c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute ;

(d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22 ;

(e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid :

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act ;

(f) the rate of interest, if any, payable on each amount referred to in clause (d) ;

(Secs. 26, 27.)

(g) an order that all the properties mentioned in the
Page 578—

In sub-section (1) of section 25, *after* clause (g) insert the following clause:—

“(h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19.”

[Inserted by Ben. Act VIII of 1940, section 15.]

[No. 6, dated the 11th July 1940.]

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

Special provision for arrears of rent.

26. Notwithstanding anything contained in this or any other Act—

- (a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;
- (b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

Ben. Act
III of
1913.
VIII of
1885.

27. (1) When an award is made as regards any debt which

Page 578—

To sub-section (1) of section 27, add the following proviso:—

“Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modification as to the period of possession as may be contained in the award.”

[Added by Ben. Act VIII of 1940, section 16.]

[No. 6, dated the 11th July 1940.]

of 1935.

(Sec. 28.)

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 28 or sub-section (4) of section 29.

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

Recovery of amounts included in an award.

If the creditor does not so apply such amount shall for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate-officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate-Officer thus allows time, he may, if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate-Officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate-officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913 :

Ben. Act
III of
1913.

Provided that, if such debtor has been declared insolvent under section 22, the Certificate-officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate-officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the movable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under the award or under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate-officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of section 25.

(Sec. 29.)

(5) When the Certificate-officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (g) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such list, the Certificate-officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate-officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

**Distribution of
sale proceeds.**

29. (1) When a Certificate-officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next—

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale; and

(b) any amount due to the ¹[Provincial Government] included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(2) After making the payments under sub-section (1), if any, the Certificate-officer shall proceed as follows :—

(a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts ;

IV of
1882.

¹See foot-note 2 on p. 565, ante.

of 1935.]

(Sec. 29.)

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate-officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act ;

- (b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate-officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award,

and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment :

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority ;

- (c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate-officer to the debtor.

(3) The proceedings of a Certificate-officer under this section shall be in accordance with rule made under this Act.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on any immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate-officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale. Ben. Act
III of
1913.

(5) If the Certificate-officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any

The Bengal Agricultural Debtors Act, 1935.

[Ben. Act VII

(Secs. 30—33.)

amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date :

Provided that the Certificate-officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate-officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

Ben. Act
III of 1913.

VIII of
1885.

Settlement of debts of a member of a co-operative society.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority. .

II of 1912.

Stay of proceedings before the Boards.

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Bar to suits and proceedings in Civil and Revenue Courts.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

(a) any debt included in an application under section 8

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In clause (a) of section 33 after the words "before a Board" insert the words "or an Appellate Officer or a District Judge or an Additional District Judge".

[Inserted by Ben. Act VIII of 1940, section 17.]

[No. 6, dated the 11th July 1940.]

of 1935.]

(Secs. 34—36.)

34. When an application under section 8 or a statement Stay and
abatement
and
ings.

For section 34 substitute the following section:—

“34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or the District Judge or the Additional District Judge includes any part of such debt in an award (a) of sub-section (1) of section 13, the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

execution
in decrees
if it is.

Explanation.—For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt in respect of which the sale takes place shall be deemed to exist until such sale becomes absolute.”

[Substituted by Ben. Act VIII of 1940, section 18.]

[No. 6, dated the 11th July 1940.]

Page 563—

In clause (iii) of section 35, for the words “a debt” substitute the words “any sum in respect of any loan other than a loan recoverable as a public demand”.

[Substituted by Ben. Act VIII of 1940, section 19 (2) (a).]

[No. 6, dated the 11th July 1940.]

Page 563—

In clause (iii) of section 35, after the word “debtor” insert the words and figures “on or after the first day of January, 1940, or”.

[Inserted by Ben. Act VIII of 1940, section 19 (2) (b).]

[No. 6, dated the 11th July 1940.]

(Secs. 37—40.)

- (b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

Attachment of debtor's immovable property.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

Act V of 1908.

Bar to appeal or revision.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Transfer of applications from one Board to another.

39. (1) The [Provincial Government] may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

Appeals.

40. (1) An appeal may be made in the prescribed manner

In section 40, for the proviso to sub-section (1) substitute the following proviso:—

“Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed.”

[Substituted By Ben. Act VIII of 1940, section 20 (1).]

[No. 6, dated the 11th July 1940.]

under sub-section (2) of section 13, section 18, clause (b) of sub-section (1) of section 19, section 21, section 22 or section 29, the Appellate Officer appointed under this section shall be a person who has had such judicial experience as may be prescribed by rules made under this Act.

of 1935.]

(Secs. 41—43.)

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The [Provincial Government] may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the appellant

In section 40, after sub-section (4) insert the following sub-section :—

“(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order.”

[Inserted by Ben. Act VIII of 1940, section 20 (2).]

[No. 6, dated the 11th July 1940.]

Page 585—

After section 40, insert the following section :—

“(4A) (1) An application may be made in the prescribed manner for revision by the District Judge of an order made by the Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or irregularity contained in the order of the Appellate Officer, or for any other sufficient cause either modify or reverse the order or any portion thereof :

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under sub-section (3) and such Additional District Judge shall in respect of the applications so transferred exercise the same powers and perform the same duties as those respectively conferred and imposed upon the District Judge under this section.”

[Inserted by Ben. Act VIII of 1940, section 21.]

[No. 6, dated the 11th July 1940.]

Power of Board
to review its
order.

44. Subject to any rules made under this Act—

Page

In clause (a) of section 44 *after* the words “person interested” *insert* the words “or of its own motion”.

[Inserted by Ben. Act VIII of 1940, section 23 (a).]

[No. 6, dated ~~the~~ 11th July 1940.]

such order in reference thereto as he thinks fit

Page

In clause (b) of section 44 *after* the words “person interested” *insert* the words “or of its own motion”.

[Inserted by Ben. Act VIII of 1940, section 23 (b).]

[No. 6, dated the 11th July 1940.]

Certain .
to apply
proceedings
under this Act.

(a) the Indian Evidence Act, 1872, and

I of 1872.

(b) the Code of Civil Procedure, 1908,

Act V of
1908.

shall not apply to any proceedings before a Board.

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

Representation

46. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings. XVIII of 1879.

Registration of
awards and
certificates.

47. (1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed. XVI of 1908.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

Publication of
orders and
awards.

48. A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the [Provincial Government].

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of 1935.]

(Secs. 49—54.)

Act
XLV of
1860.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

Chairman and members of Boards deemed to be public servants.

50. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

Proceedings deemed to be judicial proceedings.

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate-officer in respect of anything in good faith done or intended to be done under this Act.

Idemnity.

52. Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded.

Extension of period of limitation.

53. The right to receive any amount payable under an award shall be assignable in the prescribed manner.

Negotiability of awarded amounts.

54. (1) Whoever—

Penalties.

- (a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act ;
- (b) intentionally produces before a Board any false copy or translation of a document ;
- (c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other Act in any proceeding under this Act ; or
- (d) abets any act punishable under this section ;

shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

(Sec. 55.)

Power to make rules.

55. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[Provincial Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the maximum amount of debt which can be dealt with under the provisions of this Act ;
- (b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid ;
- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board ;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment ;
- (e) the procedure of a Board, and the quorum for a meeting of a Board ;
- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of section 22 ;
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39 and disposal of applications under sub-section (3) of section 8 ;
- (h) the manner of signing and verification of applications under section 8 ;

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In clause (i) of sub-section (2) of section 55 *after* the word and figure "section 13" *insert* the words, letters, figures and brackets "section 13A, sub-section (2) of section 19A".

[Inserted by Ben. Act VIII of 1940, section 24 (a).]

[No. 6, dated the 11th July 1940.]

(u) the summoning and examination by a Board of

Page ---

In sub-section (2) of section 55, *after* clause (m) *insert* the following clauses :—

"(ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18:

(mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18;"

[Inserted by Ben. Act VIII of 1940, section 24 (b).]

[No. 6, dated the 11th July 1940.]

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of 1935.]

(Sec. 55.)

- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts ;
- (q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24 ;
- (r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale ;
- (s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25 ;
- (t) the period within which an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made ;
- (u) the grant of time under sub-section (2) of section 28 for payment of the amount due ;
- (v) the distribution of sale-proceeds and the proceedings of a Certificate-officer under section 29 ;
- (w) the authorities whose approval is required under section 31 ;
- (x) the manner of giving notice under section 34 and under section 35 ;
- (y) the manner of attachment of immovable property under section 37 ;
- (z) the transfer and disposal of applications under section 39 ;
- (za) the manner of making an appeal under sub-section (1) of section 40 ;
- (zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40 ;
- (zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40 ;
- (zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer ;
- (ze) the representation of a party in proceedings before a Board ;
- (zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47 ;
- (zg) the publication under section 48 of awards and of certain orders ; and
- (zh) the manner of assignment of an award under section 53.

[Ben. Act VII of 1935.]

(Sec. 56.)

(3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

Penalty for
breach of rules.

56. In making any rule under this Act the ¹[Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Page 590—

After section 56 insert the following section :—

“57. The fees which may be prescribed under Certain fees clause (b) of sub-section (2) of section 55 for an order of determination recoverable as public demands. under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector.”

[Inserted by Ben. Act VIII of 1940, section 25.]

[No. 6, dated the 11th July 1940.]

B. G. Press—1940-41—1421A—1,050.

Bengal Act VIII of 1936.

[THE CALCUTTA MUNICIPAL (AMENDMENT) ACT, 1936.]¹

(20th February 1936.)

An Act further to amend the Calcutta Municipal Act, 1923.

**Ben. Act
III of
1923.** WHEREAS it is expedient further to amend the Calcutta Municipal Act, 1923, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Municipal Short title.
(Amendment) Act, 1936.

2. [Amendment incorporated in Bengal Act III of 1923.]

**Ben. Act
II of 1936.** 3. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, or the rules made thereunder, the provisions of the Calcutta Municipal (Second Amendment) Act, 1935, and of this Act shall apply to the general election to be held under the Calcutta Municipal Act, 1923, in the year 1936 and to any by-election which may be held there-
Special provisions for general election to be held in 1936 and all by-elections before the

Page 591—

Strike out Bengal Act VIII of 1936, and insert the following note, namely :—

(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

by paragraph 2(1), of
Laws) Order, 1937.

Bengal Act X of 1936.

(THE BENGAL WHIPPING ACT, 1936.)¹

(23rd April 1936.)

An Act to make certain offences against women punishable with whipping.

WHEREAS it is expedient to make certain offences against women punishable with whipping ;

5 & 6 Geo. V, c. 61 ;
6 & 7 Geo. V, c. 37 ; 9 & 10 Geo. V, c. 101.
AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;
It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Whipping Act, 1936. Short title and extent.

(2) It extends to the whole of Bengal.

2. Whoever—

- (a) being a member of an assembly of two or more persons the common object of which is to commit an offence punishable under section 366 of the Indian Penal Code, abets, commits or attempts to commit such offence, or Offences punishable with whipping in lieu of or in addition to other punishment.
- (b) abets, commits or attempts to commit in respect of any female person any offence punishable under section 366A, 366B, 367, 372 or 373 of the said Code ;

Act XLV of 1860.

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such abetment, offence or attempt be liable under the said Code.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1936, Pt. IV, p. 18 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVIII, No. 1, pages 92 and 118.

Bengal Act XIII of 1936.
(THE BENGAL WATER HYACINTH ACT, 1936.)

CONTENTS.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition of bringing water hyacinth into Bengal.
4. Prohibition of sale, etc., of water hyacinth.
5. Prohibition of growing or cultivation of water hyacinth.
6. Prohibition of removing water hyacinth from one place to another.
7. Power to Provincial Government to prohibit occupiers from allowing water hyacinth to exist within certain local area.
8. Cutting of branches of trees or shrubs to facilitate discovery or destruction of water hyacinth.
9. Power to Authorised Officer to enter on land, etc., in certain circumstances.
10. Restriction on entry by Authorised Officer.
11. Recovery of costs for works done by Authorised Officer.
12. Power to Collector to take possession of land or water for recovery of costs.
13. Construction of fences, barriers, etc.
14. Repair of *aile*.
15. Growing of hedges of *dhaincha* or other plants against the ingress of water hyacinth.
16. Power to Collector to use land for destruction of water hyacinth.
17. Keeping of water hyacinth for the purpose of destruction.
18. Sale, etc., of water hyacinth in certain circumstances.
19. Method of removal or destruction of water hyacinth.
20. Prosecutions.
21. Authorised Officers to be deemed public servants.
22. Indemnity.
23. Power of Provincial Government to make rules.
24. Penalties.

Bengal Act XIII of 1936.

(THE BENGAL WATER HYACINTH ACT, 1936.)¹

(28th May 1936.)

An Act to provide for the destruction of water hyacinth in Bengal.

WHEREAS it is expedient to make better provision for preventing the spread of water hyacinth in Bengal and for its destruction ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Water Hyacinth Act, 1936.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date² as the ³[Provincial Government] may, by notification, appoint.

~~is anything rem:~~ in Definitions.

Page 597—

In clause (1) of section 2 for the word and figure “and 9” substitute the word, figures and letter “9 and 13A”.

(Substituted by Ben. Act. IV of 1941, section 2.)

[No. 14, dated the 25th June 1941.]

(3) “Court” means a principal Civil Court of original jurisdiction unless the ³[Provincial Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 9th December, 1935, p. 96 ; and for report of the Select Committee, see *Calcutta Gazette*, 1936, Pt. IV, p. 52 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVII, No. 2, p. 286, and *ibid*, Vol. XLVIII, No. 1, pages 76 and 353.

²The Act came into force on the 1st August, 1936, *vide* Notification No. 4376 Agri., dated the 9th July, 1936, published in the *Calcutta Gazette*, dated the 16th July 1936, Pt. I, p. 1733.

³These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 3—6.)

- (4) "notification" means a notification published in the ¹[*Official Gazette*];
- (5) "notified area" means an area specified in a notification issued under section 7;
- (6) "occupier" means the person in actual occupation of any land, premises or water or, if there is no one in actual occupation, the person having the right of occupation of the land, premises or water or his authorised agent; and includes a local authority, a railway administration and a company in actual occupation or having such right of occupation;
- (7) "prescribed" means prescribed by rules made under this Act; and
- (8) "water hyacinth" means the plant botanically known as *Eichhornia crassipes*—Solms and includes the seed and any part of the plant.

3. No person shall, himself or by any other person on his behalf, bring water hyacinth into Bengal.

4. No person shall, directly or indirectly himself or by any other person on his behalf, sell, expose for sale or keep for sale water hyacinth.

5. No person shall grow or cultivate water hyacinth in any garden or in any ornamental water or receptacle.

6. No person shall, himself or by any other person on his behalf, remove any water hyacinth—

- (a) to any land, premises or water in his occupation except with a view to its being destroyed, or
- (b) to any land, premises or water in the occupation of another person except for the purpose aforesaid and with the consent of such other person, or
- (c) to any land, premises or water in the occupation of ²[any Government] except for the purpose aforesaid and with the consent of the Collector.

Explanation.—The expression "remove water hyacinth" includes the causing of it to float by water from one place to another.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the word "Government" by Sch. IV, *ibid.*

Prohibition of bringing water hyacinth into Bengal.

Prohibition of sale, etc., of water hyacinth.

Prohibition of growing or cultivation of water hyacinth.

Prohibition of removing water hyacinth from one place to another.

of 1936.]

(Secs. 7, 8.)

7. (1) The ¹[Provincial Government] may, by a notification, direct that within such local area and after such period as may be specified in the notification, no occupier shall allow water hyacinth to exist on any land, premises or water in his occupation.

Power to Provincial Government to prohibit occupiers from allowing water hyacinth to exist within certain local

(2) The substance of such notification shall be published in the notified area in such manner as may be prescribed.

(3) After the issue of a notification under sub-section (1) every occupier in the notified area shall cause any water hyacinth that may, from time to time, be present on any land, premises or water in his occupation to be removed or destroyed.

(4) If any occupier in a notified area fails to comply with the provisions of this section in respect of any land, premises or water in his occupation, any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and take such measures as are in his opinion necessary for removing or destroying the water hyacinth.

8. (1) With a view to facilitating the discovery or destruction of water hyacinth, an Authorised Officer may, subject to any rules made under this Act, by a notice served in the prescribed manner, direct an occupier of any land, premises or water within a notified area to cause—

Cutting of branches of trees or shrubs to facilitate discovery or destruction of water hyacinth.

(a) any branches of trees or shrubs on any such land or premises which overhang the edge of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit to be cut back and any undergrowth or jungle thereon to be removed from such edge, within a distance specified in the notice, or

(b) any vegetation appearing above the surface of any such water to be removed from the water,

within such period as may be specified in the notice.

(2) If such occupier fails to comply with a notice under sub-section (1), any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and cause the branches of such trees or shrubs to be so cut back and such undergrowth or jungle or such vegetation to be removed.

¹See foot-note 3 on p. 597, *ante*.

(Secs. 9—13.)

Power to
Authorized
Officer to
enter on
land, etc.,
in certain
circumstances.

9. An Authorized Officer may at any time, together with such persons as he may consider necessary for the purpose, enter on any land, premises or water in a notified area and take such action as may be necessary in order to ascertain—

- (a) whether any water hyacinth is present, and
- (b) whether the measures prescribed for the removal or destruction of water hyacinth or any directions issued on the occupier under sub-section (1) of section 8 have been carried out.

Restriction
on entry by
Authorized
Officer.

10. An Authorized Officer shall not enter under sub-section (4) of section 7 or sub-section (2) of section 8 or under section 9 into any dwelling house or any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier twenty-four hours' notice in writing of his intention to do so.

Recovery of
costs for
works done by
Authorized
Officer.

11. Any costs incurred by the Authorized Officer for carrying out any measures under sub-section (4) of section 7 or sub-section (2) of section 8 shall be recoverable from the occupier as a public demand payable to the Collector.

Power to
Collector to
take possession of
land or water for
recovery of costs.

12. If the Collector fails to recover, or considers it inadvisable to recover, any costs under section 11 he may, subject to any rules made under this Act, in his discretion, enter on and take possession of any land or water in respect of which the costs are due after giving notice to the occupier and retain possession thereof and turn the same to profitable account until the said costs together with interest thereon at such rate, not exceeding six and a quarter *per cent.* per annum as the ¹[Provincial Government] may prescribe, have been realized from the profits or paid by the occupier.

Construction of
fences, barriers,
etc.

13. (1) Subject to any rules made under this Act, the Collector may permit or cause fences, barriers or storage pounds to be constructed in or along the edge of any river, stream, waterway, lake, tank, marsh or *bil* whether public or private within a notified area, and booms or floating barriers to be placed or maintained therein, for the purpose of checking or diverting the movement of water hyacinth.

(2) No person shall remove or damage any fences, barriers, storage pounds, booms and floating barriers constructed, placed or maintained under sub-section (1).

¹See foot-note 3 on p. 597, *ante*.

of 1936.]

(Secs. 14—16.)

14. Subject to any rules made under this Act, the Collector may by a general notice published in the prescribed manner direct that within the whole or a specified part of a notified area all occupiers of fields within one hundred feet of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit shall by a date specified in the notice repair the small embankments commonly known as *ails* surrounding such fields.

Repair of *aile*.

15. If, in the opinion of the Collector, it is necessary for the protection of any area against the ingress of water hyacinth that hedges of *dhaincha* (*Sesbania aculeata*—Pers) or of any other plant that may be prescribed should be grown on any land in a notified area, he shall prepare a scheme giving particulars of the proposed alignment of such hedges and the boundaries of the area to be protected, and after publishing the scheme in such manner as may be prescribed and considering any objections submitted thereto may by a written notice served in such manner as may be prescribed direct any occupier of such land to grow thereon a hedge of such description by such date and for such period as may be specified in the notice.

Growing of hedges of *dhaincha* or other plants against the ingress of water hyacinth.

16. (1) If, in the opinion of the Collector, it is necessary to use any waste or arable land in a notified area for the destruction thereon of water hyacinth removed from any water in the same or another notified area he may, subject to any rules made under this Act and after service of a notice in the prescribed manner on the occupier of such land specifying in the notice the purpose, and the term not exceeding six months, for which the land is needed, enter upon and take possession of the land and use it or permit it to be used for the said purpose.

Power to Collector to use land for destruction of water hyacinth.

(2) If any material damage or injury is caused thereby to the occupier of such land, the Collector shall pay to him such compensation as shall be agreed upon in writing between the Collector and such occupier :

Provided that in assessing such compensation the manurial value of the water hyacinth destroyed thereon shall be taken into account.

(3) If the Collector and the occupier differ as to the sufficiency of the compensation or if the Collector and two or more claimants for compensation differ as to the apportionment thereof, the Collector shall refer the matter to the decision of the Court.

(4) On the expiry of the term referred to in sub-section (1) the Collector shall restore such land to the occupier after causing to be destroyed all water hyacinth that may have been removed thereto.

(Secs. 17—23.)

Keeping of water hyacinth for the purpose of destruction.

17. Notwithstanding anything contained elsewhere in this Act, any occupier in a notified area may keep on any land or in any water in his occupation water hyacinth for destruction.

Sale, etc., of water hyacinth in certain circumstances.

18. Notwithstanding anything contained elsewhere in this Act, any person or class of persons authorised by the ¹[Provincial Government] in this behalf may, subject to rules made under this Act, sell, remove or keep water hyacinth for a prescribed purpose.

Method of removal or destruction of water hyacinth.

19. When water hyacinth is to be removed or destroyed under the provisions of this Act, such removal or destruction shall be in the prescribed manner.

Prosecutions.

20. No prosecution under this Act shall be commenced without the previous sanction of the Collector or after three months from the date of the alleged offence.

Authorised Officers to be deemed public servants.

21. An Authorised Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Indemnity.

22. No suit, prosecution or other legal proceedings shall lie against the Collector or any Authorised Officer or persons accompanying an Authorised Officer for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Power of Provincial

23. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act.

Page 602—

In sub-section (2) of section 23—

- (a) in clause (a) after the words "a general notice" insert the words, figures, letter and brackets "under sub-section (2) of section 13A or", and
- (b) in clause (d) after the figures "13" insert the figures and letter "13A".

(Inserted by Ben. Act IV of 1941, section 4.)

[No. 14, dated the 25th June 1941.]
section 16 ;

- (d) the exercise of powers by the Collector under section 12, 13, 14 or 16 ;
- (e) the rate of interest payable under section 12 ;
- (f) the plants for growing hedges to prevent ingress of water hyacinth under section 15 ;

¹See foot-note 3 on p. 597, ante.

of 1936.]

(Sec. 24.)

- (g) the purposes for which, and the conditions subject to which, water hyacinth may be sold, removed or kept under section 18 ; and
(h) the manner of removal and destruction of water hyacinth under section 19.

(3) In making any rule under this section the ¹[Provincial Government] may provide that a breach of it shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with a further fine which may extend to five rupees for every day after the first during which the breach continues.

24. Whoever contravenes any of the provisions of this Act mentioned in the first column of the following table shall, on conviction, be liable to a fine not exceeding one hundred rupees or in default to imprisonment not exceeding one month, and upon a second or subsequent conviction to a fine not exceeding two hundred rupees or in default to imprisonment not exceeding two months. Penalties.

Explanation.—The entries in the second column of the following table headed “Subject” are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof :—

| 1 | 2 |
|-----------------------------|---|
| Provisions of the Act. | Subject. |
| Section 3 | Bringing of water hyacinth into Bengal. |
| Section 4 | Sale, etc., of water hyacinth. |
| Section 5 | Growing or cultivation of water hyacinth. |
| Section 6 | Removal of water hyacinth to any land, premises or water. |
| Section 7, sub-section (3) | Failure to remove or destroy water hyacinth. |
| Section 8, sub-section (1) | Failure to cut branches of trees or shrubs, and to remove undergrowth, jungle or vegetation. |
| Section 13, sub-section (2) | Removal of or damage to any fences, barriers, storage pounds, booms and floating barriers. |
| Section 14 | Failure to repair <i>ails</i> . |
| Section 15 | Failure to grow hedges of <i>dhaincha</i> or other plants for protection against the ingress of water hyacinth. |

¹See foot-note 3 on p. 597, *ante*.

Bengal Act XVI of 1936.

[THE BENGAL LOCAL SELF-GOVERNMENT ASSOCIATIONS (RECOGNITION) ACT, 1936.]¹

(14th January 1937.)

An Act to provide for the recognition by the Local Government of certain associations interested in the administration of local self-government in Bengal and to enable contributions to be paid by local authorities to associations so recognised.

WHEREAS it is expedient to provide for the recognition by the Local Government of certain associations interested in the administration of local self-government in Bengal and to enable contributions to be paid by local authorities to associations so recognised ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Local Self-Government Associations (Recognition) Act, 1936. Short title.

2. The ²[Provincial Government] may, if it thinks fit, by notification in the ³[Official Gazette], recognize any association, which, in the opinion of the ²[Provincial Government], has been established in Bengal with the sole object of encouraging the discussion of matters of importance relating to the administration of local self-government in Bengal, or otherwise generally promoting the interests of local self-government therein, and the ²[Provincial Government] may also, if it thinks fit, at any time, in like manner, withdraw such recognition. Recognition of local self-government associations.

3. Notwithstanding anything contained in any other Act, the Corporation of Calcutta, the Commissioners of any municipality at a meeting, a district board or a union board may, subject to the provisions of any rules made under section 5, pay a contribution, annually or otherwise, from the municipal, district, or union fund, as the case may be, to the funds of any association which is, for the time being, recognised by the ²[Provincial Government] under sec- Contribution by local authorities to recognised associations.

Page 605—

In section 4—

(a) after the words “a general meeting” insert the words “or a meeting of an executive committee”, and

(b) for the words “the meeting” substitute the words “such a meeting,” and to the said section add the following proviso, namely:—

“Provided that the number of meetings of an executive committee for attending which a member of a local authority may be paid travelling expenses under this section, shall not exceed four in one year.”

(Inserted, substituted and added by Bengal Act VI of 1947, section 2.)

[No. 42, dated the 12th January, 1948.]

¹These words were substituted for the words “Bengal Local Self-Government Associations (Recognition) Act, 1936” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words “Calcutta Gazette”, *ibid.*

[Beng. Act XVI of 1936.]

(Sec. 5.)

Power to
make rules.

5. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the power the ¹[Provincial Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the maximum rates at which, and the conditions subject to which contributions may be paid under section 3 ;
- (b) the rates at which, the conditions subject to which, and the maximum number of representatives to whom, travelling expenses may be paid under section 4.

¹See foot-note 2 on p. 605, *ante*.

Bengal Act XVIII of 1936.

[THE PRESIDENCY-TOWNS INSOLVENCY (BENGAL AMENDMENT) ACT, 1936.]¹

(11th February 1937.)

An Act to amend the Presidency-towns Insolvency Act, 1909, in its application to the Presidency-town of Calcutta.

III of
1909.

WHEREAS it is expedient to amend the Presidency-towns Insolvency Act, 1909, in its application to the Presidency-town of Calcutta in the manner hereinafter appearing ;

5 & 6
Geo. V, c.
61; 6 &
7 Geo.
V, c. 37
9 & 10
Geo. V, c.
101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

Short title
and commence-
ment.

(2) It shall come into force on such date² as the ³[Provincial Government] may, by notification in the ⁴[*Official Gazette*], appoint.

2. The Presidency-towns Insolvency Act, 1909, hereinafter referred to as the said Act, shall, in its application to the Presidency-town of Calcutta, be amended in the manner hereinafter provided.

Application of
Act.

3. In section 77 of the said Act,—

Amendment of
section 77 of Act
III of 1909.

(a) *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939)*

(b) in sub-section (1A) for the figures “ 112 ” the figures and letter “ 112A ” shall be substituted ; and

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1936, Pt. IV, p. 121 ; and for report of the Select Committee, see *ibid.*, p. 132 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIX, pages 28 and 246.

²The Act came into force on the 15th March, 1937, vide Notification No. 1164-J., dated the 17th February, 1937, published in the *Calcutta Gazette*, dated the 25th February 1937, Pt. I, p. 369.

³These words were substituted for the words “ Local Government ” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “ *Calcutta Gazette* ”, *ibid.*

608 *The Presidency-towns Insolvency (Bengal Amendment) Act, 1936.*

[Ben. Act XVIII]

(Sec. 4.)

(c) for sub-section (3) the following sub-section shall be substituted, namely :—

Page 608—
“(3) Notwithstanding anything contained in

In clause (3) of section 3, for the words “at Fort William” substitute the words “at Calcutta”.

(Substituted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]

substantive or temporary, as the case may be, as if appointed by the ¹[Provincial Government] under sub-section (1).”

Substitution
of new sections
81 and 81B for
section 81.

4. For section 81 of the said Act, the following sections shall be substituted, namely :—

81. The official assignee and any deputy official assignee shall, in the discharge of their functions under this Act, be under the administrative control of the ¹[Provincial Government] except in so far as they are required by or under this Act to act under the control or direction of the High Court.

81A. Rep. by the *Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

81B. (1) The ¹[Provincial Government] may determine the number, designations and grades of officers and servants (other than employees who are paid by the day) whom the official assignee may employ for the purposes of this Act and the amount and nature of the salary, allowances and other remuneration to be paid to each such officer and servant.

(2) Rep. by the *Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939)*

(3) The salaries, allowance and other remuneration of the officers and servants of the official assignee and all other costs, charges and expenses of his establishment shall be paid by the ¹[Provincial Government].”

¹See foot-note 3 on p. 607, ante.

The Presidency-towns Insolvency (Bengal Amendment) 609
Act, 1936.

of 1936.]

(Secs. 5, 6.)

5. Section 82 of the said Act shall be renumbered as sub-section (1) of that section and after that sub-section as so renumbered the following sub-sections shall be added, namely :—

Amendment of section 82.

“(2) The revenues of the ¹[Provincial Government] shall be liable to make good all sums which the official assignee is required by order of the Court to pay under sub-section (1) in respect of any misfeasance, neglect or omission which occurred after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

Ben. Act
XVIII of
1936.

(3) Nothing in sub-section (2) shall prevent the ¹[Provincial Government] from recovering any sum paid by the ¹[Provincial Government] under that sub-section from the person who was holding the office of official assignee when the misfeasance, neglect or omission occurred.”

6. After section 82 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 82A, 82B and 82C.

“82A. Where the official assignee has incurred, whether before or after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, in the matter of any insolvency—

Liability of Provincial Government for costs in legal proceedings, etc.

(a) any costs in legal proceedings taken by him under the direction of the Court, or

(b) any civil liability, *bona fide* in the discharge of his duties,

the revenue of the ¹[Provincial Government] shall be liable for the payment of such costs or liability, in so far as the assets realized by the official assignee in respect of such insolvency are insufficient to meet such costs or liability.

82B. Where an insolvent's estate has no available assets, the official assignee shall not incur any costs, charges or expenses in respect of such estate without the express direction of the Court, but the Court on the application of the official assignee may empower him to spend an amount specified by the Court in payment of any costs, charges and expenses of or in connection with the realization or administration of the estate of the insolvent, and the revenues of the ¹[Provincial Government] shall be liable for the payment of such amount.

Certain liabilities not to be incurred without the express direction of the Court.

¹See foot-note 3 on p. 607, ante.

**610 The Presidency-towns Insolvency (Bengal Amendment)
Act, 1936.**

[Ben. Act XVIII]

(Sec. 7.)

82C. Any sum paid out of the revenues of the ¹[Provincial Government] under section 82A or section 82B in respect of an insolvent's estate shall be repaid to the ¹[Provincial Government] by the official assignee out of any assets of the estate which may

Sums paid under section 82A or section 82B to be realized from the estate of the insolvent.

subsequently become available, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act."

7. After section 84 of the said Act the following section shall be inserted, namely:—

"84A. (1) The official assignee shall maintain an account in the prescribed manner and shall pay into such account, after making any prescribed deductions—

Account of official assignee, investments and proceeds of investments.

(a) all monies received by him in the realization of insolvents' estates, and

(b) any other sums that may be prescribed.

(2) Subject to the control of the ¹[Provincial Government], whenever the cash balance standing to the credit of the said account is, in the opinion of the official assignee in excess of the amount which is required for the time being to meet demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee shall invest such excess in the prescribed manner.

(3) Subject to the control of the ¹[Provincial Government], whenever any part of the money so invested is, in the opinion of the official assignee, required to meet any demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee may realize such part of the said investments as may be necessary, and shall credit the proceeds of such realization to the said account.

(4) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf the proceeds of such investments, and the same shall be carried to the account and credit of the ¹[Provincial Government].

(5) The provisions of sub-section (4) shall apply to the balance of the proceeds, accumulated before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, of the investments made by the official assignee of sums received by him in the realization of insolvents' estates, whether such balance or any part thereof has been invested or not.

Ben. Act
XVIII of
1936.

Insertion
of new section
84A.

¹See foot-note 3 on p. 607, ante.

The Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

of 1936.]

(Secs. 8, 9.)

Ben. Act
XVIII of
1936.

(6) Subject to the provisions of sub-section (5), the provisions of sub-sections (1), (2) and (3) shall apply to all monies in the hands of the official assignee at the date of the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and to all investments made by him before that date."

8. In section 112 of the said Act—

Amendment of
section 112.

(a) in sub-section (1), after the word "rules" the words, figures and letter "except in regard to those matters to which section 112A applies" shall be inserted;

(b) in sub-section (2)—

(i) in clause (a), after the word "percentages" the words "other than fees and percentages chargeable by the official assignee" shall be inserted;

(ii) clauses (b), (d), (e), (f), (g), (h), (i) and (s) shall be omitted.

9. After section 112 of the said Act the following section shall be inserted, namely:—

Insertion of
new section
112A.

"112A. (1) The ¹[Provincial Government] may make rules for carrying into effect the objects of this Act in regard to those functions of the official assignee which are discharged under the administrative control of the ¹[Provincial Government].

Power of Provincial
Government to make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged by the official assignee for and in respect of proceedings under this Act and the manner in which the same are to be collected and accounted for;

(b) the receipts, payments and accounts of the official assignee;

(c) the audit of the accounts of the official assignee;

(d) the security to be given by the official assignee and his deputy or deputies;

(e) the distribution of work between the official assignee and his deputy or deputies;

(f) *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939)*

¹See foot-note 3 on p. 607, ante.

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[Ben. Act XVIII of 1936.]

(Secs. 10—12.)

- (g) the payment by the ¹[Provincial Government] of sums under sub-section (2) of section 82, or under section 82A or section 82B ;
- (h) the repayment by the official assignee of sums under section 82C ;
- (i) the maintenance of an account by the official assignee under sub-section (1) of section 84A and the payments to be made into such account ;
- (j) the investment of sums by the official assignee under sub-section (2) of section 84A and the realization of such investments ;
- (k) the transfer and payment by the official assignee of the proceeds of investments to the authority referred to in sub-section (4) of section 84A ; and
- (l) the transfer and payment by the official assignee of fees and percentages, and of commission or other remuneration, to the authority referred to in section 125.

(3) Rules made under this section shall be published in the ²[Official Gazette] and shall thereupon have the same force and effect as if they had been enacted in this Act."

t of
section 113.

10. In section 113 of the said Act, for the words " of this Part " the words and figures " of section 112 " shall be substituted.

Amendment of
section 125.

11. Section 125 of the said Act shall be renumbered as sub-section (1) of that section and after that sub-section as so renumbered the following sub-sections shall be added, namely :—

" (2) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf all fees and percentages received by him after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and the same shall be carried to the account and credit of the ¹[Provincial Government].

Ben. Act
XVIII of
1936.

(3) Any percentages or commission or other remuneration received by the official assignee if appointed as a trustee in a composition or as agent of another official assignee shall be similarly so transferred and paid by him."

Amendment of
rule 18 in
the Second
Schedule.

12. In rule 18 in the Second Schedule to the said Act, for the words and brackets "(unless it is otherwise ordered)" the words and brackets "(unless it is otherwise ordered for reasons to be recorded in writing)" shall be substituted.

¹See foot-note 3 on p. 607, ante.

²These words were substituted for the words " Local Official Gazette " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act XIX of 1936.

(THE BENGAL NON-AGRICULTURAL LANDS ASSESSMENT ACT, 1936.)

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24. Correction of roll.
25. Notification of order under section 3 or section 4 to be conclusive evidence.
26. Rules.

THE SCHEDULE.

Bengal Act XIX of 1936.

(THE BENGAL NON-AGRICULTURAL LANDS ASSESSMENT ACT, 1936.)¹

(18th February 1937.)

Pages 615-626—

Strike out the Bengal Non-agricultural Lands Assessment Act, 1936 (Ben. Act XIX of 1936), and insert the following note, namely :—

(Repealed by West Ben. Act XX of 1949, section 91.)

[No. 44, dated the 2nd August, 1949.]

belong to the Crown or are held by the local authorities ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10
Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Non-Agricultural Lands Assessment Act, 1936.

Short title,
commencement
and extent.

(2) It shall come into force on such date² as the '[Provincial Government] may, by notification in the '[Official Gazette], appoint.

(3) It extends to the whole of Bengal outside the limits of the Ordinary Original Civil Jurisdiction of the High Court and to the following areas within the said limits :—

(i) the area on the left or Alipore side of Tolly's Nala, and

(ii) the area within the boundaries given in the schedule.

XXIII of
1850.

(4) Nothing contained in the Calcutta Land Revenue Act, 1850, shall prevent the operation of the provisions of this Act in the areas specified in clauses (i) and (ii) of sub-section (3).

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1936, Pt. IV, p. 79 ; and for report of the Select Committee, see *ibid.* p. 100, and for further report of the Select Committee, see *ibid.* p. 129 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVIII, No. 2, p. 509 ; and *ibid.* Vol. XLIX, pages 33, 333, 380 and 447.

²These words were substituted for the words " the Government " by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

³The Act came into force on the 1st July, 1937—*Vide* Notification No. 12249L.R., dated the 12th June 1937, published in the *Calcutta Gazette*, dated the 17th June 1937, Pt. I, p. 1486.

⁴These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words " *Calcutta Gazette* ", *ibid.*

(Sec 2.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

- (1) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector and includes a part of, and any accretion to, an estate ;
- (2) "estate which belongs to ¹[the Crown]" includes—
 - (a) all lands in which ¹[the Crown] have proprietary rights ;
 - (b) all lands permanently leased to ¹[the Crown] ; and
 - (c) all lands leased to ¹[the Crown] for not less than thirty years with a right of renewal of the lease ;
- (3) "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenancy or in limitation of his own interest therein ;
- (4) "non-agricultural land" means land which, at the time when an order is made under section 3 in respect of the land is used for purposes not connected with agriculture or horticulture, irrespective of whether such land or any part thereof was originally leased for agricultural or horticultural purposes or not, but does not include—
 - (a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885, apply, VIII of 1885.
 - (b) subject to rules made under this Act, the site of any mosque, temple, church or other place of public worship or of any charitable institution, with the adjacent land appertaining thereto,
 - (c) a burial-ground or burning ghat,
 - (d) that portion of a tank where water is stored or accumulates during any part of the year,

¹See foot-note 2 on p. 615, *ante*.

The Bengal Non-agricultural Lands Assessment Act, 617
1936.

of 1822.]

(Sec. 3).

(e) land ordinarily used for agricultural or horticultural purposes which is lying uncultivated, or

(f) land in the districts of Darjeeling, Jalpaiguri or Chittagong which is used for purposes connected with the cultivation or manufacture of tea ;

(5) "prescribed" means prescribed by rules made under this Act ;

(6) "roll" means a roll prepared under clause (b) of section 3 ;

Reg. VII
of 1822.

(7) "the Regulation" means the Bengal Land-revenue Settlement Regulation, 1822 ;

(8) "tenant of the highest degree" means a tenant who holds land directly under ¹[the Crown] or a tenant other than ¹[the Crown] who holds land directly under the proprietor of an estate ;

VIII of
1885.
IV of 1882.

(9) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885, or the Transfer of Property Act, 1882, have the same meanings as in those Acts.

3. When an order has been made under section 101 of the Bengal Tenancy Act, 1885, or under section 4, in respect of any local area, estate, tenure or part thereof of which a settlement of land-revenue is being or is about to be made, the ²[Provincial Government] may make an order directing the Revenue-officer, after recording under section 102 of the said Act or under section 4 those particulars which are relevant, and after publishing the draft of the record-of-rights and disposing of any objections thereto in accordance with rules made by the ²[Provincial Government] under the Bengal Tenancy Act, 1885, or under this Act, as the case may be,—

Order for
estimate of
fair rents of
non-agricultural
lands.

(a) to estimate fair and equitable rents—

(i) for all, or any class of, tenants of all or any non-agricultural lands, and

(ii) for all or any non-agricultural lands which are held *khas* by a landlord

¹See foot-note 2 on p. 615, *ante*.

²See foot-note 4 on p. 615, *ante*.

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Act, 1936.*

[Ben. Act XIX

(Secs. 4—6.)

in such local area, estate, tenure or part, and

- (b) to prepare in the prescribed form and manner a roll in which the rents so estimated, together with such other particulars as may be prescribed, shall be specified.

Power to order survey and preparation of record-of-rights.

4. (1) When a settlement of land-revenue is being or is about to be made of any area to which the Bengal Tenancy Act, 1885, does not, for the time being extend, the ¹[Provincial Government], if it thinks fit, may make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in accordance with rules to be made by the ¹[Provincial Government] in this behalf, in respect of all non-agricultural lands in such area.

VIII of
1885.

(2) Where an order is made under sub-section (1), the particulars to be recorded shall be specified in the order and may include, either without or in addition to others, any of those particulars specified in section 102 of the Bengal Tenancy Act, 1885.

Meaning of "settlement of land-revenue" in sections 3 and 4.

5. The term "settlement of land-revenue" as used in sections 3 and 4 includes a settlement of rent in an estate which belongs to ²[the Crown].

Method of estimating fair rents.

6. In estimating a fair and equitable rent under section 3, the Revenue-officer shall take into consideration—

- (a) the existing rent and the period during which it has remained without enhancement;
- (b) the rent generally paid to ²[the Crown] or to any other landlord for non-agricultural lands with similar advantages or of a similar description in the vicinity;
- (c) the market value of the land immediately before the order under section 3 was made;
- (d) the rent which would be payable if the rate were fixed at not more than four *per cent.* of such market value;
- (e) the special conditions and incidents, if any, of the tenancy; and
- (f) any cost incurred in making any improvement in respect of the land or in converting it for the purposes for which it was used at the time when the order under section 3 was made:

¹See foot-note 4 on p. 615, *ante*.

²See foot-note 2 on p. 615, *ante*.

of 1936.]

(Secs. 7, 8.)

Provided that the rent estimated under this section shall not be enhanced during a period of not less than thirty years.

VIII of
1885.

7. Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order has been made under section 3 directing a Revenue-officer to estimate fair and equitable rents in respect of any non-agricultural lands in a local area, estate, tenure or part thereof—

Procedure where both agricultural and non-agricultural lands are concerned.

- (a) the rents of such non-agricultural lands shall not be settled under Part II of Chapter X of the said Act, and
- (b) where any of such non-agricultural lands are comprised in a tenancy which includes agricultural lands, the Revenue-officer shall—
 - (i) divide the tenancy so as to constitute separate tenancies for the non-agricultural and the agricultural lands ;
 - (ii) apportion the existing rent between the tenancies so constituted ;
 - (iii) estimate fair and equitable rents for the non-agricultural lands under the provisions of this Act ;
 - (iv) in an area to which the Bengal Tenancy Act, 1885, extends for the time being, settle the rent of the agricultural lands under Part II of the said chapter ; and
 - (v) make such consequential changes in the record-of-rights as may be necessary.

8. (1) When a roll has been prepared the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall consider any representations made in regard to any entry therein or omission therefrom during the period of publication, and shall dispose of such representations according to such rules as the ¹[Provincial Government] may make.

Publication of roll, hearing of representations and confirmation.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before the roll is confirmed under section 9 revise any entry therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹See foot-note 4 on p. 615, *ante*.

(Secs. 9—11.)

Final revision of
roll and its
confirmation by
prescribed
Revenue
authority.

9. (1) When all representations have been disposed of under section 8, the Revenue-officer shall submit the roll to the prescribed Revenue authority for confirmation with a full statement of the grounds of his proposals and a summary of the representations (if any) which he has received.

(2) Such authority may confirm the roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the roll shall be open to inspection at such place and times as may be prescribed.

Effect of estimate
of fair rents in
temporarily
settled estate.

10. In a temporarily settled estate—

(a) the rents specified in any roll for the tenants of the highest degree and for any lands held *khas* by the proprietor or other person with whom the estate is settled, together with

(b) the assets of any lands not included in a roll shall, notwithstanding anything contained in the Regulation, be deemed to be the assets of the estate for the purpose of assessing the land-revenue.

Effect of
estimate of
fair rents
in estate
held *khas*
by Revenue
authorities.

11. (1) In an estate which is held *khas* by the Revenue authorities under section 3 of the Regulation, the Collector may realise from any tenant of the highest degree, a sum not exceeding the amount of the rent specified in the roll for a tenant of the highest degree in respect of the land.

(2) If a tenant of the highest degree does not agree, within such period as may be prescribed in this behalf, to pay the sum referred to in sub-section (1), the Collector may realise from any other person who is a tenant of the highest degree in respect of the land or from the under-tenant who holds the land directly under a tenant of the highest degree a sum not exceeding the amount of the rent specified in the roll for the tenant of the highest degree :

Provided that where such land is held by two or more under-tenants the proportionate amount payable by each such under-tenant shall be determined by the Collector in accordance with such rules as the ¹[Provincial Government] may make in this behalf.

¹See foot-note 4 on p. 615, *ante*.

of 1936.]

(Secs. 12, 13.)

(3) If any such under-tenant does not agree to pay the sum which he is liable to pay under sub-section (2), the provisions of that sub-section shall be applicable *mutatis mutandis* to the realisation of the said sum or any part thereof from his under-tenants or, if any of them do not agree to pay, from under-tenants of any lower degree successively.

(4) Any sum payable by a tenant or under-tenant under this section shall be paid periodically at such times and in such manner as may be prescribed, and such payment shall be deemed to be a complete discharge to the tenant or under-tenant for all rent for the land, payable by him under any subsisting contract, for the period in respect of which the payment is made.

12. (1) In an estate which belongs to ¹[the Crown] the rents specified in the roll for the tenants of the highest degree shall be binding on tenants of that degree, and shall be payable to ¹[the Crown] with effect from such date as may be prescribed.

Effect of estimate of fair rents in estate belonging to the Crown.

(2) If a tenant of the highest degree does not agree, within such period as may be prescribed in this behalf, to pay any rent which he is liable to pay under sub-section (1), the provisions of sub-sections (2), (3) and (4) of section 11 shall, *mutatis mutandis*, be applicable.

13. Notwithstanding anything contained elsewhere in this Act—

Abatement of amounts payable in respect of lands leased or used for residential purposes.

(1) where land has been leased to or used by any person for residential purposes, then, so long as the land or any part thereof is occupied for such purposes by such person or any of his successors by inheritance, as a tenant of the highest degree, the Collector shall allow an abatement of the amount payable under section 11 or section 12 in respect of such land or part. The amount of such abatement shall be determined by the Collector and shall not be less than two-thirds of the difference between—

(a) the amount of the rent which was payable before the order under section 3 was made, and

(b) the amount payable according to the roll, by a tenant of the highest degree in respect of such land or part;

¹See foot-note 2 on p. 615, *ante*.

(Secs. 14—17.)

- (2) where such land has been transferred by sale, gift or mortgage and the transferee is in occupation of the land or any part thereof for residential purposes, as a tenant of the highest degree, such transferee shall be deemed, for the purposes of clause (1), to be the person to whom such land or part, as the case may be, was leased for residential purposes ;
- (3) for the purposes of section 10, the rent specified in the roll for a tenant of the highest degree shall be deemed to be modified in accordance with the provisions of clauses (1) and (2) in any case in which such tenant would be entitled to an abatement if the land were included in an estate to which the provisions of section 11 or section 12 are applicable.

Restriction on
exclusion of
sections 11 and
12 by
agreement.

14. Nothing in any contract made before or after the commencement of this Act shall affect the provisions of sections 11 and 12.

Estimated rents
not to be bind-
ing except as ex-
pressly provided.

15. Except as expressly provided by this Act the rents specified in the roll shall not be binding on any landlord or tenant.

Appeals.

16. (1) Any person who is aggrieved by any entry in or omission from a roll prepared in respect of lands in an estate which is held *khas* by the Revenue authorities under section 3 of the Regulation or in an estate which belongs to ¹[the Crown] may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of Revenue, in the manner and within the period prescribed in this behalf.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue made under this Act, except as provided in section 17.

Suits.

17. (1) Any person who is aggrieved by any entry in or omission from a roll prepared in respect of lands in an estate which is held *khas* by the Revenue authorities under section 3 of the Regulation or in an estate which belongs to ¹[the Crown] may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

¹See foot-note 2 on p. 616, *ante*.

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of 1936.]

(Secs. 18, 19.)

(2) Such suit must be instituted within six months from the date of confirmation of the roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or, if an appeal has been presented under section 16, within three months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

- (a) that the land is not liable to the payment of rent ;
- (b) that the relation of landlord and tenant does not exist ;
- (c) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of an estate or tenancy ;
- (d) that in the record-of-rights there has been any omission of an under-tenant or such under-tenant has been wrongly recorded as holding the land rent-free ;
- (e) that in the record-of-rights the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded ;
- (f) that in the record-of-rights any right of way or other easement attaching to the land has not been recorded or has been wrongly recorded ;
- (g) that the land has been wrongly recorded in the roll as non-agricultural land ;
- (h) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

¹18. No suit shall be instituted against the Crown under section 17 unless the Crown is interested as landlord or tenant.

Suit not to be instituted against the Crown.

19. When an order has been made under section 4 directing the preparation of a record-of-rights, then, subject to the provisions of section 17, a Civil Court shall not entertain any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies until after the final publication of the record-of-rights.

Stay of proceedings in Civil Court during preparation of record-of-rights under section 4.

¹Section 18 was substituted for the original section 18 by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

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[Ben. Act XIX

(Secs. 20—26.)

Limitation of jurisdiction of Civil Courts regarding preparation of record-of-rights under section 4.

Recovery of sums due.

Passing of right, title and interest of tenant in sales.

Application to set aside

Correction of roll.

Notification of order under section 3 or section 4 to be conclusive evidence.

Rules.

20. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under section 4 or in respect of the framing, publication, signing or attestation of such a record or any part of it.

21. Any sum payable to ¹[the Crown] under section 11 or section 12 shall be recoverable as an arrear of land-revenue.

22. When a tenancy is sold in consequence of the provisions of section 21 the purchaser shall take the right, title and interest of the tenant in the tenancy free from any incumbrance created after the final publication of the record-of-rights.

23. Any person whose interests are affected by a sale referred to in section 22 may apply to the Collector to set aside the sale on his depositing within thirty days from the date of sale—

(a) for payment to ¹[the Crown], the amount for the recovery of which the sale was held, with costs; and

(b) for payment to the purchaser as compensation, a sum equal to five *per cent.* of the purchase money;

and if the deposit is duly made within the said period the Collector shall thereupon make an order setting aside the sale.

24. The Revenue-officer may, at any time, correct any *bona fide* clerical mistake in or omission from the roll and shall make such alterations in the same as may be necessary to give effect to any decision under sub-section (1) of section 16 or sub-section (1) of section 17.

25. A notification in the ²[*Official Gazette*] of an order under section 3 or of an order under section 4 shall be conclusive evidence that the order has been duly made.

26. (1) The ³[Provincial Government] may, after previous publication, make rules for carrying out the purposes of this Act.

¹See foot-note 2 on p. 615, *ante*.

²See foot-note 5 on p. 615, *ante*.

³See foot-note 4 on p. 615, *ante*.

of 1936.]

(Sec. 26.)

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the determination of the classes of schools, hospitals, dispensaries, or other institutions, which shall be deemed to be charitable institutions, and of the adjacent lands which shall be deemed to appertain to a place of public worship or charitable institution, for the purposes of clause (b) of sub-section (4) of section 2 ;
- (b) the disposal of objections under section 3 ;
- (c) the form of a roll under clause (b) of section 3, the manner of preparing the same and the particulars to be specified therein ;
- (d) the manner of making a survey and preparing a record-of-rights under section 4, and the procedure to be followed and the powers to be exercised by Revenue-officers under that section ;
- (e) carrying out the purposes of section 6 ;
- (f) the division of a tenancy and the apportionment of the rent under clause (b) of section 7 ;
- (g) the manner and period of publication of a draft roll under sub-section (1) of section 8 ;
- (h) the disposal of representations under sub-section (1) of section 8 ;
- (i) the appointment of the Revenue-authority referred to in sub-section (1) of section 9 ;
- (j) the publication of the date of confirmation of a roll under sub-section (3) of section 9 and the place and times of inspection of such roll ;
- (k) the period referred to in sub-section (2) of section 11 and sub-section (2) of section 12 ;
- (l) the determination by the Collector of the proportionate amounts payable by under-tenants under sub-section (2) of section 11 ;
- (m) the time and manner of payment of a sum referred to in sub-section (4) of section 11 and of a similar sum under sub-section (2) of section 12 ;
- (n) the date from which the rent shall be payable to ¹[the Crown] under sub-section (1) of section 12 ;
- (o) the appointment of the Revenue authority referred to in sub-section (1) of section 16, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals must be presented under the said sub-section.

¹See foot-note 2 on p. 615, *ante*.

(*The Schedule.*)

[**Ben. Act XIX of 1936.**]

THE SCHEDULE.

**BOUNDARIES OF THE AREA REFERRED TO IN CLAUSE (ii) OF
SUB-SECTION (3) OF SECTION 1.**

From a point situated on the "water-line" of the left or Alipore side of Tolly's Nala at the west side of Kidderpore Bridge, thence crossing the Nala along the west side of Kidderpore Bridge to the north bank of Tolly's Nala and then along the west side of Kidderpore Road to a point 330 feet from Kidderpore Bridge, then along the west side of St. George's Gate Road to its junction with Clyde Row, thence along the south side of Clyde Row to a point situated on the west side of Napier Road 124 feet from the south-east corner of the compound of Marine House, thence along the eastern wall of the compound of Marine House to the north-east corner of the compound of Marine House, then along the northern wall of the compound of Marine House to the water-line of the river Hooghly on the south side of Takta Ghat, then along the water-line of the river Hooghly to its junction with Tolly's Nala, then crossing Tolly's Nala in a direct line to the Alipore side of Tolly's Nala and thence along the water-line of the Alipore side of Tolly's Nala to the starting point at the west side of Kidderpore Bridge.

Explanation.—The expression "water-line" means the moving edge of the water wherever it may be at any time.

Bengal Act I of 1937.

(THE BENGAL MINISTERS' SALARIES ACT, 1937.)¹

Page 627—

Strike out Bengal Act I of 1937 *putting* an asterisk before the said Act, and *insert* the following footnote after footnote 1, namely:—

- *This Act has been repealed by West Bengal Act IX of 1948, section 4.

(Repealed by West Bengal Act IX of 1948, section 4.)

[No. 43, dated the 5th June, 1949.]

o and
ement.

(2) It shall come into force on the first day of October 1937.

2. There shall be paid a salary—

Salaries.

(a) to the Chief Minister at the rate of three thousand rupees *per mensem*; and

(b) to each of the other Ministers at the rate of two thousand five hundred rupees *per mensem*.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 29th July 1937, p. 200.

. Bengal Act II of 1937.

[THE BENGAL LEGISLATIVE CHAMBERS (MEMBERS' EMOLUMENTS) ACT, 1937.]

(5th October 1937.)

An Act to fix the salaries and allowances of Members of the Bengal Legislative Chambers.

WHEREAS it is expedient to fix the salaries and allowances of the Members of the Bengal Legislative Chambers ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Legislative Chambers (Members' Emoluments) Act, 1937. Short title and commencement.

(2) It shall be deemed to have come into force from the first day of April 1937.

2. In this Act and for the purposes thereof " Member " Definition. means a Member either of the Bengal Legislative Council or of the Bengal Legislative Assembly, other than the Governor's Council of Ministers, the President of the said Council, the Speaker of the said Assembly, Parliamentary Secretaries, Parliamentary Under-Secretaries and Parliamentary Private Secretaries, if any.

* 3. There shall be paid to each Member a salary at the Salaries. rate of one hundred and fifty rupees *per mensem* with effect from the date on which he takes his oath.

4. Subject to such conditions as may be determined Allowances. by rules made under this Act :—

(a) there shall be paid to members not ordinarily

55 620—
For section 3, substitute the following section with an asterisk, namely :—

“*3. There shall be paid to each member a salary at the rate of two hundred rupees *per mensem* with effect from the Salaries. date on which he takes his oath:

Provided that the salary of any member in respect of any period prior to the first day of January, 1944, shall be paid at the rate of one hundred and fifty rupees *per mensem*.”

and add the following footnote, namely :—

“*This section as substituted by section 2 of Bengal Act I of 1945 shall be deemed to have been made on and to have effect from the first day of January, 1944.”

(Substituted by Bengal Act I of 1945, section 2.)

[No. 36, dated the 10th July, 1945.]

[Ben. Act II of 1937.]

(Sec. 5.)

of the place at which their attendance is required in connection with their duties as members—

(i) daily allowance at the rate of ten rupees *per diem*.

For sub-clause (i) of clause (a) of section 4 substitute the following, namely:—

“(i) daily allowance at the rate of fifteen rupees *per diem* :

Provided that in respect of any period prior to the commencement of the Bengal Legislative Chambers (Members' Emoluments) Amendment Act, 1945, daily allowance shall be paid at the rate of ten rupees *per diem*.”

(Substituted by Bengal Act I of 1945, section 3.)

[No. 36, dated the 10th July, 1945.]

Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

- (a) to prescribe the periods during which, and the conditions under which, daily allowance and conveyance allowance may be drawn, and the circumstances under which such allowances may be withheld ;
- (b) to fix the rates of road mileage allowance, and to prescribe the conditions under which such allowance may be drawn ; and
- (c) to prescribe the distances referred to in section 4 in respect of each of the allowances referred to in the said section.

(3) All rules made under this section shall be published in the *Official Gazette*.

Bengal Act III of 1937.

[THE BENGAL LEGISLATURE (REMOVAL OF DISQUALIFICATIONS) ACT, 1937.]¹

(5th October 1937.)

An Act to declare that the holders of certain offices of profit under the Crown in India shall not be disqualified for membership of the Bengal Legislature.

26 Geo.
V, c. 2.

WHEREAS it is expedient to declare in accordance with the provisions contained in clause (a) of sub-section (1) of section 69 of the Government of India Act, 1935, that the holders of certain offices of profit under the Crown in India shall not be disqualified for being chosen as, and for being, members of the Bengal Legislative Assembly or the Bengal Legislative Council;

Page 631—

Strike out the Bengal Legislature (Removal of Disqualifications) Act, 1937, and insert the following note, namely:—

(Repealed by West Ben. Act VI of 1952, section 3.)

[No. 49, dated the 15th September, 1952.]

under the Crown in India, namely:—

- (a) an office of a Parliamentary Secretary or a Parliamentary Under-Secretary, if and when such office is created;
- (b) an office which is not a whole time office remunerated either by salary or by fees;
- 2. (c) an office in a railway service, provided that the holder thereof is a person defined to be qualified for inclusion in the electoral roll for a trade union, factory or colliery constituency in accordance with the provisions of any Order or rule for the time being in force.

tions
ship.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*.

Page 631—

Insert the figure "2" against clause (c) of section 2 and add the following footnote:—

"2. Section 2 shall have effect while Bengal Act XIX of 1940 is in force [see section 1(2) thereof] as if after clause (c) thereof the following clause had been added, see section 2 of Bengal Act XIX of 1940—

- (d) an office in any of His Majesty's naval, military or air forces in India, or an office under the Central Government, connected with the equipment or administration of any of those forces or otherwise connected with the defence of India, provided that this clause shall not apply in the case of any person who has, since the 2nd day of September, 1939, been continuously in wholetime service of the Crown in India'."*

[No. 11, dated the 21 January 1941.]

Bengal Act III of 1938.

(THE BENGAL FAMINE INSURANCE FUND ACT, 1937.)¹

(5th May 1938.)

Page 633—

In section 1, for the figure "1937" substitute the figure "1938".

(Substituted by West Bengal Act VII of 1948, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

~~Insurance in Bengal~~ of a Fund for expenditure upon relief of, and insurance against, famine and distress caused by serious drought, flood, earthquake, or other natural calamities ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Famine Insurance Fund Act, 1937. Short title.

2. In this Act, unless there is anything repugnant in the subject or context, "Fund" means the Bengal Famine Insurance Fund established under section 3. Definition.

3. On the commencement of this Act, the Provincial Government shall establish in and for Bengal a Fund, called the Bengal Famine Insurance Fund. Establishment of the Bengal Famine Insurance Fund.

The Fund shall consist of—

- (i) the contribution by the Provincial Government under section 4 ;
- (ii) such other sums as the Provincial Government may contribute to the Fund under section 7 ; and
- (iii) the interest which may from time to time accrue on the securities in which the sums to the credit of the Fund may be invested or re-invested under section 6.

4. As soon as may be after the commencement of this Act, the Provincial Government shall, for the purpose of the establishment of the Fund, make an initial contribution to the Fund, of the sum of ten lakhs of rupees. Initial contribution to the Famine Insurance Fund by Provincial Government.

5. Expenditure from the Fund shall not be incurred except upon the relief of famine and the relief of distress caused by serious drought, flood, earthquake or other natural calamities : Purposes for which the Fund may be utilised.

¹For Statement of Objects and Reasons, see Calcutta Gazette, Extraordinary, dated the 6th August 1937, p. 208.

(Secs. 6—9.)

Provided that, if at any time, the total amount of the Fund exceeds twelve lakhs of rupees, the Provincial Government may utilise such excess to meet expenditure on protective irrigation works and other works for the prevention of famine or flood or to pay debt charges for which the Provincial Government may from time to time be liable, including interest, sinking fund charges and redemption charges.

Investment
and re-invest-
ment of
Page

6. The Provincial Government shall from time to time invest or re-invest in its own securities or in the securities of the Central Government all sums to the credit of the

In sub-section (1) of section 7 after the words "West Bengal Legislative Assembly" insert the words "and before the West Bengal Legislative Council when that Council is constituted".
(Inserted by Adaptation Order, 1950, paragraph 3 and the Eleventh Schedule.)

[No. 47, dated the 1st February, 1952.]
Bengal Legislative Assembly
annual financial statement of the Province.

(2) If the Accounts so made up in respect of any year show that the balance at the credit of the Fund falls short of twelve lakhs of rupees, the deficiency shall be made up by contribution from the revenues of the Province :

Provided that if the deficiency exceeds two lakhs of rupees, it may be made up in annual instalments, the amount of each instalment except the last being not less than two lakhs of rupees.

Contributions
under the Act
to be charged
upon the
revenues
of the Province.

8. All contributions made under this Act to the Fund are hereby declared to be expenditure charged upon the revenues of the Province.

Power of
Provincial
Government
to make
rules.

9. The Provincial Government may make rules, consistent with this Act, for the purpose of giving effect to the provisions of this Act.

Bengal Act IV of 1938.

(THE BENGAL EXPIRING LAWS ACT, 1938.)¹

(19th May 1938.)

An Act to provide for the continuance in force of certain Bengal Acts.

• WHEREAS the Bengal Acts mentioned in the schedule are, in so far as they are temporary in their duration, limited to expire on certain dates during the year 1938 ;

AND WHEREAS it is expedient that those Acts should be continued in force and for that purpose amended in the manner specified in the schedule ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Expiring Laws Short title. Act, 1938.

2. The Bengal Acts mentioned in the schedule (hereinafter referred to as the said Acts) shall be continued in force, and such provisions contained in the said Acts as limit the periods for which the said Acts or any parts thereof are to remain in force, namely, those provisions specified in the fourth column of the schedule, are hereby repealed : Certain Acts to be continued.

Ben. Act
XII of
1935.

Provided that clause (7) of section 7 of the Indian Stamp (Bengal Amendment) Act, 1935, shall not continue in force after the 31st May, 1938.

3. If any or all of the said Acts or parts thereof were due to expire before the commencement of this Act, this Act shall, notwithstanding the provisions of any other law, be deemed and taken to have effect as fully and effectually, as if this Act had come into force before the first date on which any of the said Acts or parts thereof were due to expire. Contingent provision.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 4th February 1938, p. 77.

*(The Schedule.)***THE SCHEDULE.***(See Section 2.)*

| Year. | No. | Short title. | Provisions repealed. |
|-------|------|---|--|
| 1 | 2 | 3 | 4 |
| 1935 | X | The Bengal Electricity Duty Act, 1935. | In sub-section (3) of section 1, the words "and shall continue in force for three years only." |
| 1935 | XI | The Court-fees (Bengal Second Amendment) Act, 1935. | Sub-section (4) of section 1. |
| 1935 | XII | The Indian Stamp (Bengal Amendment) Act, 1935. | Sub-section (4) of section 1. |
| 1935 | XIII | The Bengal Amusements Tax (Amendment) Act, 1935. | Sub-section (3) of section 1. |

Bengal Act VII of 1938.

(THE CALCUTTA OFFICIAL RECEIVER'S ACT, 1938.)¹

(22nd September 1938.)

An act to provide for the administration and control of the office of Official Receiver of the High Court in Calcutta.

WHEREAS it is expedient to provide for the administration and control of the office of Official Receiver of the High Court in Calcutta ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Calcutta Official Receiver's Act, 1938.

Short title
and commence-
ment.

(2) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act unless there is anything repugnant in the subject or context—

Definitions.

(1) " Court " means the High Court in Calcutta ;

(2) " Official Receiver " means the Official Receiver of the Court ;

(3) " prescribed " means prescribed by rules made by the Provincial Government under this Act.

3. (1) There shall be an Official Receiver and there may be one or more Deputy Official Receivers.

Appointment,
status, rights,
liabilities, etc.,
of Official
Receiver and
Deputy Official
Receiver.

(2) The offices of Official Receiver and of Deputy Official Receivers (if any) shall be civil posts under the Crown in India.

(3) Subject to the provisions of sub-section (2) of section 6, all rights, privileges, titles and liabilities of the Official Receiver subsisting immediately prior to the commencement of this Act shall accrue to and vest in the Official Receiver appointed under this Act.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, dated the 27th January 1938, Pt. IVA, p. 11.

(Secs. 4—6.)

(4) The person holding the office of Official Receiver immediately prior to the commencement of this Act shall without further appointment become the Official Receiver appointed under this Act, and it shall not be necessary for the Court to reappoint him under section 4 in any case in which he has previously been appointed a receiver.

(5) A Deputy Official Receiver shall, subject to the control of the Provincial Government and to general or special orders of the Official Receiver, be competent to discharge any of the duties and exercise any of the powers of the Official Receiver and shall, when discharging such duties or exercising such powers, have the same rights and privileges and be subject to the same liabilities as the Official Receiver.

**Appointment of
Official Receiver
as receiver and
his duties, rights
and liabilities as
such.**

4. Subject to, and in accordance with, the provisions of this Act and of rules made thereunder but notwithstanding the provision of sub-section (2) of section 3, the Official Receiver may be appointed a receiver by the Court in respect of any property, and save as provided in this Act, he shall have the same powers, duties and liabilities, shall be entitled to the same rights and privileges and shall be subject to the same control by the Court as any other receiver so appointed.

**Conditions of
receivership.**

5. (1) The Official Receiver shall not act as receiver in respect of any property except in accordance with the provisions of this Act and of rules made thereunder.

(2) Notwithstanding anything contained in any other law, the Official Receiver—

(a) shall not be required by the Court to enter into any bond or security, and

(b) shall always be a sole receiver, and it shall not be lawful to appoint him to be a receiver in respect of any property jointly with any other person.

**Liability of
Provincial
revenues in
certain cases.**

6. (1) The revenues of the Province shall be liable to make good all sums required to discharge any liability which the Official Receiver may, as a receiver appointed by the Court, be personally liable to discharge :

Provided that neither the revenues of the Province nor the Official Receiver shall be liable to discharge any liability to which neither the Official Receiver nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by exercise of reasonable diligence, have averted.

of 1938.]

(Secs. 7—9.)

(2) Nothing in sub-section (1) shall be deemed to render liable the revenues of the Province or any Official Receiver appointed under this Act for anything done by, or under the authority of, any Official Receiver of the Court before the commencement of this Act.

(3) Nothing in sub-section (1) shall prevent the Provincial Government from recovering any sum paid by them thereunder from the Official Receiver liable personally to pay such sum.

(4) Sums payable by the Provincial Government under sub-section (1) are hereby declared to be charged on the revenues of the Province.

7. (1) The Official Receiver shall charge such fees, **Fees.** by way of percentage or otherwise, as may in consultation with the Court be prescribed, provided that in the case of any receivership accepted by him before the commencement of this Act, he shall charge fees in accordance with the law then in force.

(2) The fees prescribed under sub-section (1) may be at different rates for different properties or classes of properties.

8. (1) The Official Receiver shall transfer and pay to such authority and in such manner and at such times as may be prescribed, all fees received by him after the commencement of this Act, and the same shall be carried to the account and credit of Provincial revenues. **Transfer and payment of fees.**

(2) Any fees or remuneration received by the Official Receiver as agent of an Official Receiver (by whatever designation called) of another Court or in accordance with the provisions of any other Act shall be similarly so transferred and paid by him.

9. (1) The Official Receiver shall maintain an account in the prescribed manner, and shall pay into such account after making any prescribed deductions— **Account of Official Receiver, investments and proceeds of investments.**

(a) all monies received by him in the administration of any property, and

(b) any other sums that may be prescribed.

(2) Subject to the control of the Provincial Government—

(a) whenever the cash balance standing to the credit of the account referred to in sub-section (1) is, in the opinion of the Official Receiver, in excess of the amount required for the time being both to meet demands in respect of properties under the control of the Official Receiver and to make any payments that may be prescribed, the Official Receiver shall invest such excess, and

[**Ben. Act VII**]

(Secs. 10, 11.)

- (b) whenever any part of the money so invested is in the opinion of the Official Receiver, required to meet such demands or to make such payments, he may realise such part of the sums invested as may be necessary for such purposes, and he shall credit the proceeds of such realisation to the said account.

(3) The Official Receiver shall transfer and pay to such authority and in such manner and at such times as may be prescribed, the interest earned by, and any profits accruing from the realisation of, any investments under clause (a) of sub-section (2), and the same shall be carried to the account and credit of Provincial revenues.

(4) Nothing in this section shall be deemed to affect the power of the Court to give directions to the Official Receiver in regard to the investment of any property held by him as a receiver appointed by the Court or in regard to the credit of any interest earned by, and any profits accruing from the realisation of, such investment.

Suits by or
against the
Official Receiver.

10. (1) Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Official Receiver in which no relief is claimed against him personally. Act V of 1908.

(2) The Official Receiver shall not sue or be sued without the express permission of the Court.

(3) Subject to the provisions of this Act and of all other law relating to receivers appointed by the Court, the Official Receiver may sue and be sued by and in the name of "The Official Receiver in the matter of....." and in that name, may hold property of every description, make contracts, enter into engagements binding upon himself and his successors in office and do all other acts necessary or expedient to be done in the execution of his office.

Power of
Provincial
Government to
make rules.

11. (1) The Provincial Government may make rules for carrying into effect the objects of this Act in regard to those functions of the Official Receiver which are discharged under the administrative control of the Provincial Government.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the distribution of work between the Official Receiver and any Deputy Official Receiver ;
- (b) the payment or recovery of any sums by the Provincial Government under section 6 ;

(Sec. 11.)

- (c) the fees to be charged by the Official Receiver under section 7 and the manner in which the same are to be collected and accounted for ;
- (d) the authority referred to in sections 8 and 9 and the manner in which fees, remuneration or interest and profits on investments shall be paid and transferred thereto ;
- (e) the receipts, payments and accounts of the Official Receiver ;
- (f) the audit of the accounts of the Official Receiver ;
- (g) the safe custody of such monies and securities as may come into the hands of, or under the control of, the Official Receiver ;
- (h) the deductions referred to in sub-section (1) of section 9 and the sums which shall be paid into the account of the Official Receiver under clause (b) thereof ;
- (i) the procedure to be followed in making payments into, and withdrawals from, the account referred to in section 9 ;
- (j) the investment of monies and the realisation of investments under section 9 ;
- (k) the payments referred to in sub-section (2) of section 9.

PART II.

Eastern Bengal and Assam Acts in force in Bengal.

E. B. and A. Act II of 1907.

(THE EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT, 1907).¹

(6th April 1907.)

An Act to provide for the discontinuance of Brothels and Disorderly Houses in certain localities in Eastern Bengal [and Assam].

Whereas it is expedient to make provision for the discontinuance of brothels and disorderly houses in certain localities in Eastern Bengal [and Assam];

It is hereby enacted as follows :—

1. (1) This Act may be called the Eastern Bengal and Assam Disorderly Houses Act, 1907;

Short title and extent.

(2) It applies to all municipalities constituted under the Bengal Municipal Acts, 1876² and 1884²; and

(3) The ³[Provincial Government] may, by notification in the ⁴[Official Gazette], extend it to any specified local area not being a municipality.

Bengal Acts V of 1876 and III of 1884.

2. When any Magistrate of the first class receives information—

Power to summon owner, etc., of brothel.

(a) that any house in the vicinity of any educational institution, or of any boarding-house, hostel or mess used or occupied by students, is used as a brothel or for the purpose of habitual prostitution, or as a disorderly house, or

(b) that any house is used as aforesaid to the annoyance of the inhabitants of the vicinity, or

(c) that any house in the vicinity of a cantonment is used as a brothel or for the purpose of habitual prostitution,

¹LEGISLATIVE PAPERS.—For the Report of Select Committee, see E. B. and A. Gazette, 1907, Pt. V, p. 15; and for Proceedings in Council, see *ibid*, 1906, Pt. VI, p. 9; *ibid* 1907, Pt. VI, p. 21.

LOCAL EXTENT.—This Act applies to all municipalities in Eastern Bengal constituted under the Bengal Municipal Act, 1884 (Ben. Act III of 1884), and may be extended, by notification, to any area in Eastern Bengal, see s. 1.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

This Act is repealed in the areas in which the Bengal Suppression of Immoral Traffic Act, 1933 (Ben. Act VI of 1933) is in force.

²Ben. Act V of 1876 was repealed and re-enacted in Bengal by Ben. Act III of 1884 which again has been repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) and this reference should now be construed as a reference to the last mentioned Act. See the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

³These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Government Gazette", *ibid*.

644 *The Eastern Bengal and Assam Disorderly Houses
Act, 1907.*

[E. B. & A. Act II of 1907.]

(Secs. 3—7.)

he may summon the owner, tenant, manager, or occupier of the house to appear before him either in person or by agent to show cause why the use of such house should not be discontinued for any of the purposes or in any of the ways described in this section.

Order for dis-
continuance.

3. If the Magistrate is satisfied that the house is used as described in clause (a), clause (b), or clause (c), as the case may be, of the foregoing section, he may, by written order, direct such owner, tenant, manager or occupier, within a period to be stated in such order, not less than five days from the date thereof, to discontinue such use.

Failure to
appear.

4. If the owner, tenant, manager, or occupier, after being duly summoned, does not appear in person or by agent on the day fixed for his appearance, the Magistrate may pass an order under the foregoing section *ex parte*.

Initiation of
proceedings.

5. Prosecutions under section 3 shall be instituted only—

(a) with the sanction or by order of the District Magistrate ; or

(b) on the report of the Chairman of the Commissioners of the Municipality concerned, in pursuance of a resolution passed by the said Commissioners at a meeting ; or

(c) on the complaint of three or more persons occupying separate holdings and resident in the vicinity of the house to which the complaint refers.

Penalty.

6. If after the period stated in an order under section 3 the house is used in any of the ways described in section 2 the person against whom the order has been passed shall be punishable with fine that may extend to twenty-five rupees for every day after the expiration of that period during which the house is so used :

Provided that no fine shall be imposed on an owner if he is able to prove to the satisfaction of the Magistrate that he has taken such action as is within his power to comply with the order.

Power to
inspect house.

7. When the use of a house in any of the ways described in section 2 has been directed by an order under section 3 to be discontinued, it shall be lawful for the District Magistrate, by an order in writing, to authorize any officer, not below the rank of a Sub-Inspector of Police, to enter and inspect the said house at any time after the expiration of the period specified in the order under section 3, for the purpose of satisfying himself that the order is being complied with.

E. B. and A. Act II of 1912.

(THE JALPAIGURI LABOUR ACT, 1912.)¹

(30th March 1912.)

An Act to provide for the keeping of registers and the submission of returns by employers of labour in the district of Jalpaiguri.

Whereas it is expedient to provide for the keeping of registers and the submission of returns by employers of labour in the district of Jalpaiguri ;

It is hereby enacted as follows :—

1. This Act may be called the Jalpaiguri Labour Act, Short title.
1912.

2. It extends—

Extent.

(a) to the district of Jalpaiguri ; and

(b) to such other parts of Eastern Bengal ^{2*} * as
the ³[Provincial Government] may, ^{4*} * *
by notification in the ⁵[Official Gazette], direct.

3. It shall come into force—

Commence-
ment.

(i) in the territories mentioned in clause (a) of section 2,
at once ; and

(ii) in any territories to which it may be extended by a
notification under clause (b) of the said section, on
such day as may be specified in that behalf in the
notification.

4. In this Act, unless there is anything repugnant in the Definitions.
subject or context,—

(a) “estate” means the land upon which more than 50
persons have been engaged to labour ;

(b) “employer” means the chief person for the time
being in charge of any estate ;

(c) “Inspector” means an Inspector appointed under this
Act by the ³[Provincial Government], and includes
the Magistrate of the district.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons
see E. B. and A. Gazette, 1911, Pt. V, p. 3 ; for Proceedings in Council
see *ibid.*, Pt. VI, pp. 12, 13, and E. B. and A. Gazette, Extraordinary,
dated the 30th March, 1912, pp. 15 to 18.

LOCAL EXTENT.—This Act extends to the district of Jalpaiguri,
and may be extended by notification to any other part of Eastern
Bengal, see s. 2.

The application of the Act is barred in the Chittagong Hill-tracts
by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²The words “and Assam” were omitted by Sch. IV of the Govern-
ment of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “Local Government”
by paragraph 4(1), *ibid.*

⁴The words “with the previous sanction of the Governor General
in Council” were omitted by Sch. IV, *ibid.*

⁵These words were substituted for the words “local Official Gazette”
by paragraph 4(1), *ibid.*

[E. B. & A. Act II of 1912.]

(Secs. 5—10.)⁶

Registers to be kept and returns made by employers.

5. Every employer shall keep such registers of all persons employed on the estate of which he is in charge and of their dependants, in such form, and shall make to the Inspector such periodical returns in writing, as the ¹[Provincial Government] may, by rule, prescribe.

Power of the Inspector to inspect lands and houses and to make requisitions and inquiries.

6. Any Inspector may verify the accuracy of the entries in the registers or in any prescribed periodical return; and for this purpose may enter and inspect all lands and houses used by the persons employed on the estate, and may require that the persons employed on the estate, or any particular class or classes or individual or individuals of them, shall be brought before him; and may make any inquiries which he thinks proper regarding the accuracy of the entries in the registers or returns; and the employer shall be bound to the best of his ability to comply with every such requisition and to answer every such inquiry made by the Inspector.

Power to make rules.

7. (1) In addition to the powers hereinbefore conferred, the ¹[Provincial Government] may make rules to carry out any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the form of all registers under this Act;
- (b) define and regulate the powers and duties of Inspectors appointed by it under this Act;
- (c) prescribe what returns and reports shall be made under this Act by any such Inspector or by any employer, and the form in which such returns and reports shall be respectively so made.

Employer refusing or omitting to keep registers, etc.

8. Whoever, being an employer, refuses or wilfully omits to keep such registers or to make such periodical returns in writing to the Inspector as may be prescribed by any rule made under this Act, or knowingly keeps an incorrect register or makes an incorrect return, shall be punishable with fine which may extend to Rs. 200.

Employer or other person obstructing Inspector under section 6.

9. Whoever, being an employer or acting under the orders or on behalf of an employer, wilfully obstructs any entry, inspection or inquiry, or omits to comply with any requisition, made under section 6, shall for every such offence be punishable with fine which may extend to Rs. 200.

Powers of Provincial Government to exclude estates, etc., from the Act.

10. The ¹[Provincial Government] may, by notification in the ²[Official Gazette], exclude any specified portion of the district, or any specified estates or class of estates, from the operation of this Act.

¹See foot-note 3 on p. 645, ante.

²See foot-note 5 on p. 645, ante.

